The CRIMINAL IMBECILE

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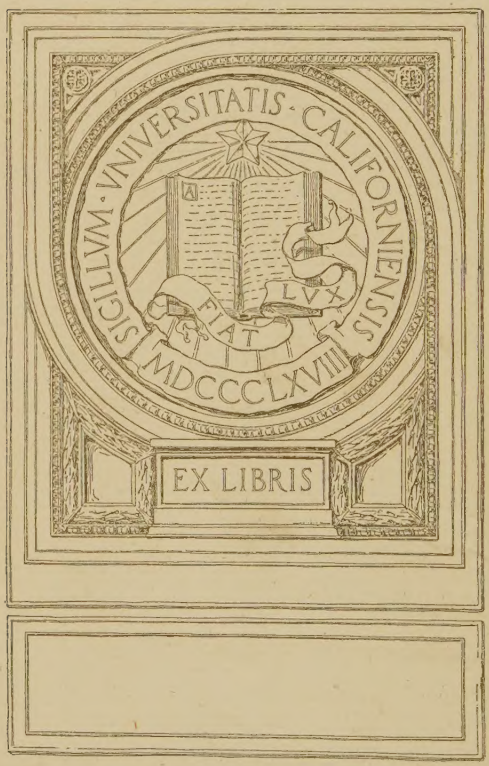

THE CRIMINAL IMBECILE

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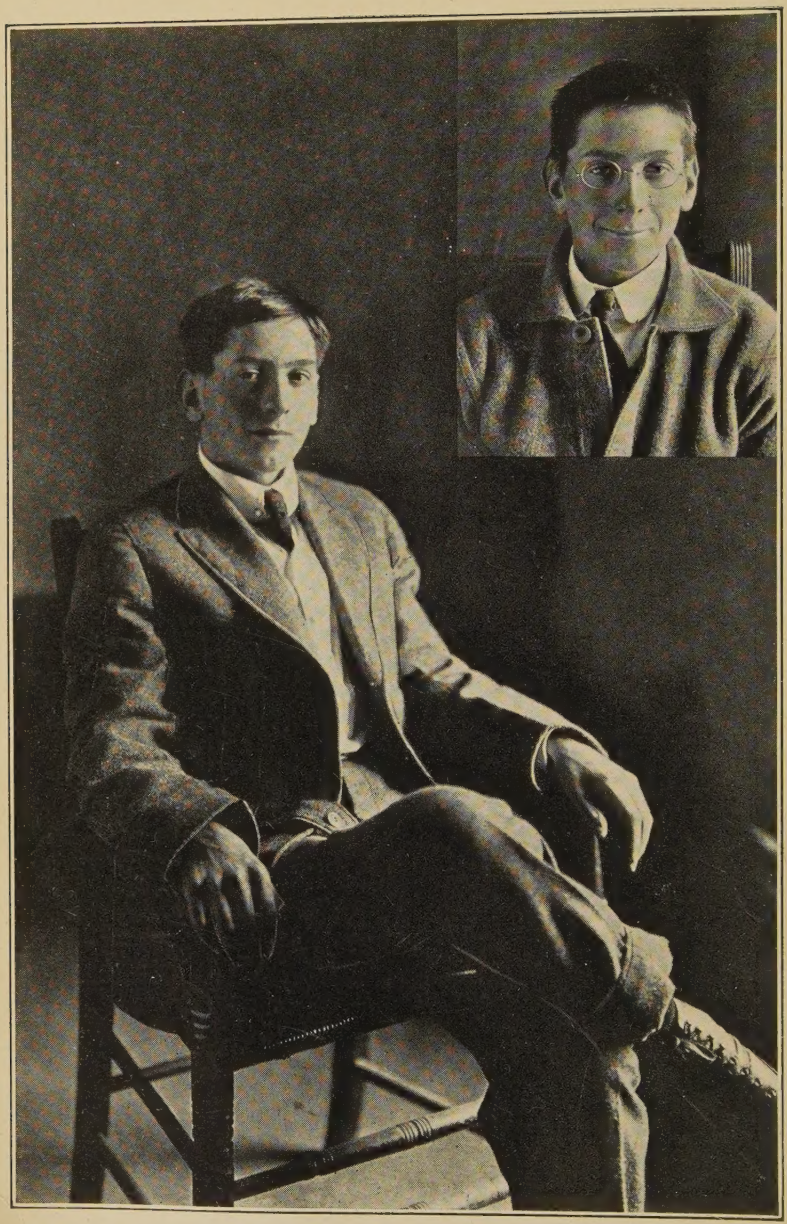

JEAN GIANINI.

(Upper picture taken in jail. Printed by permission of Zintsmaster and Jones, Herkimer, N. Y., Photographers.)

THE CRIMINAL IMBECILE

AN ANALYSIS OF THREE REMARKABLE MURDER CASES

BY

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PREFACE

This book is offered to the public in the belief that the three cases herein described are typical of a large proportion of criminal cases and that the analysis and discussion attempted will help to make clear important points which are often misunderstood, points relative to the criminal and to the imbecile.

A clear conception of the nature of the imbecile and of his relation to crime will inevitably result in a most desirable change in our criminal procedure.

It should be noted that we use "imbecile" in the legal sense which includes the moron and often the idiot as scientifically classified. This usage is justified since much of the literature still describes all mental defectives as imbeciles, idiots, or feeble-minded — according to the preference of the writers.

These cases are unique in that they were the first court cases in which the Binet-Simon tests were admitted in evidence, the mental status of these persons under indictment being largely determined by this method.

It happens, also, that these cases well illustrate three phases of the workings of defective minds. Jean Gianini shows the criminal imbecile of high grade and of loquacious type working by himself. Roland Pennington, equally high grade but of a quiet, phlegmatic temperament, shows how a defective mind works under suggestion. Finally, Tronson shows the crude brutality of a somewhat lower grade defective.

In the chapter on Responsibility we have tried to indicate the difference between *verbal* morality and deep-seated, appreciated, moral principle. A child may have the former but the latter comes only with experience and the age at least of the adolescent.

We would remind the reader that in the confessions and the appendices we have had at hand only stenographic reports.

If this book shall help the lawyer to make a more successful defense of the imbecile criminal, the judge to dispense justice to this much misunderstood class of high grade imbeciles, and society in general to realize its responsibility for the mental defective, it will have fulfilled its mission.

H. H. G.

Research Laboratory of the Training School
in Vineland, N. J.

CONTENTS

PAGE

PREFACE v

CHAPTER

I. THE CASE OF JEAN GIANINI 1

II. THE CASE OF ROLAND PENNINGTON . . . 42

III. THE CASE OF FRED TRONSON 65

IV. THE CRIMINAL IMBECILE 83

V. RESPONSIBILITY 94

VI. THE PUNISHMENT FOR CRIMINAL IMBECILES . . 100

APPENDICES

A. GIANINI CASE. HYPOTHETICAL QUESTION PROPOUNDED BY THE DEFENSE 109

B. GIANINI CASE. HYPOTHETICAL QUESTION PROPOUNDED BY THE PROSECUTION . . . 131

C. GIANINI CASE. DEFENDANT'S REQUEST TO CHARGE 139

INDEX 155

LIST OF ILLUSTRATIONS

Jean Gianini	*Frontispiece*
	FACING PAGE
Roland Pennington	42
Fred Tronson	66

THE CRIMINAL IMBECILE

CHAPTER I

THE CASE OF JEAN GIANINI

"We find the defendant in this case not guilty as charged; we acquit the defendant on the ground of criminal imbecility."

Such was the verdict by the jury of the Supreme Court of Herkimer County, New York, on May 28th, 1914, in the case of the people *vs.* Jean Gianini, indicted for the murder of Lida Beecher, his former teacher.

The prosecution and, at first at least, the majority of the citizens of the community held that this had been a carefully planned, premeditated, cold-blooded murder of the most atrocious character, committed with a fiendishness seldom seen among human beings. It was, on the other hand, claimed by the defense that the boy was an imbecile, that he had only the intelligence of a ten-year-old child, that he did not know the nature and quality of his act, and that he did not have any

true realization of the enormity of his crime. For some reason unaccountable to a great many people, the jury accepted the view of the defense.

Not infrequently have verdicts in murder trials been unacceptable to the populace. In that respect this verdict is not an exceptional one, but from other standpoints it is remarkable. Probably no verdict in modern times has marked so great a step forward in society's treatment of the wrongdoer. For the first time in history psychological tests of intelligence have been admitted into court and the mentality of the accused established on the basis of these facts.

The value of this verdict cannot be overestimated. It establishes a new standard in criminal procedure. It recognizes that *weakness* of mind, as an excuse for crime, is of the same importance as *disease* of mind; puts feeble-mindedness in the same category with insanity, and requires that it like insanity be considered in all discussions of responsibility. When we add the now accepted fact that the feeble-minded are at least as numerous as the insane, we see the far-reaching significance of this standard set by the Supreme Court of Herkimer County, New York.

That the verdict has not been at once acceptable to the people is due to the fact that the character and

the limitations of the high-grade imbecile are not understood. With a view to explaining this type of defective, which the defendant so well illustrates, we propose in the following pages to go over the history of this case, explaining the facts in the light of present-day knowledge of the feeble-minded.

The facts in the case as established by testimony : —

On the morning of March 28th, 1914, Henry Fitch, a farmer of Herkimer County, accompanied by his son, started on his usual work to deliver milk. At a point in the highway, approximately one mile from the village of Poland, Mr. Fitch saw blood and signs of a struggle in the snow and slush in the road; he also found an umbrella and a hat. A bloody path led out of the road to a point some hundred and thirty feet away. Following the tracks he found the body, which proved to be that of Lida Beecher, one of the school-teachers in the village of Poland. She lay at full length on her face, both arms under her. The body was removed to Sprague's undertaking rooms in the village.

On the same morning Jean Gianini, sixteen years old, left his father's house on the edge of the village to go to the home of Sam Hutchinson, where he was working and taking his meals. He had his breakfast,

went to the barn, and worked a short time. When Mr. Hutchinson went out a little later, he could not find Jean. A Mr. Smith said he had seen him going down the tracks toward Newport. William Taylor, the track foreman, said he passed Jean near the bridge. Mr. Hutchinson then sent word to the boy's father that he had gone. The father, supposing his son had run away as he frequently did, telephoned to Newport asking that he be apprehended and sent home. This was before anything was known of the crime. Peck Newman, to whom the father telephoned, found Jean in a grocery store in Newport. He had been apprehended at the depot. He was taken home and then to the Justice of the Peace. Here he was stripped, presumably for the purpose of discovering whether there was any blood upon his clothing or his body. Although there is no evidence that any stains were found, yet he had no sooner been stripped than he made a free and open confession. We shall consider this confession in detail later. In substance he said that he killed Miss Beecher to get revenge, because she had humiliated him in school. He told in detail how he had accomplished this and what had been his movements shortly before and after the deed. On the strength of this confession and such corroborative evidence as could be

obtained from local witnesses the prosecution sought to convict this boy of murder in the first degree.

It was understood at first that the defense would attempt to prove that he was insane. There did not seem to be much evidence of insanity and it did not appear that the prosecution was in great fear of such a verdict. As a matter of fact, the real defense was imbecility. It is probable that this defense was less intelligible to people who knew Jean Gianini than that of insanity would have been. To one familiar with imbecility, however, there is no shadow of a doubt of the correctness of this diagnosis. The only possible question in the mind of any such person would be whether a defective of such high grade knew the nature and quality of his act and knew that it was wrong, and was therefore responsible for his act. This point the jury decided, and we shall attempt to show by a study of the case that they decided correctly.

Much of the confusion in the mind of the public and dissatisfaction with the result in this case is due to a failure to understand the nature and character of the imbecile. Most of the acts and the utterances of the defendant, which seemed to many people to indicate his soundness of mind, his premeditation and planning of the murder, are in reality so thoroughly character-

istic of the imbecile as to leave no doubt whatever of his low mentality.

We have already given all that is known of the circumstances except certain details which Jean claimed in his confession, and certain acts and utterances which were testified to by local witnesses.

We may now examine these testimonies, reserving his confession for a later discussion. So far as the crime itself is concerned but little testimony was brought forward; so little, in fact, that without the boy's confession he probably could never have been convicted of the deed.

On the evening of the tragedy Jean was seen by several people walking up the street toward his home in company with his victim. Two days before this he had been heard to ask her when she was coming to see his father about his returning to school; to this she had replied, that she "did not know"; and he had answered, "Aw, I don't believe you intend to come at all, you will wait until summer time, and go home and then it will be too late." On the following evening he again asked her to go up to his house. She said she could not go then, as she was going to prayer meeting, but she would go the next night. He had also inquired of certain persons whether she went to the Post Office

in the evening. On one occasion he had been seen with an old rusty wrench in his pocket and when asked what he was doing with it, he had replied, "I have use for it." This was the wrench with which he struck his victim the death-blow, according to his confession.

Previous to the tragedy he had told certain persons that he meant to get even with Miss Beecher. The wrongs for which he claimed to have desired revenge had occurred more than a year before the tragedy. For over a year he had been out of school and had been working a part of that time. For some months he had been an inmate of St. Vincent's School, to which institution he was committed by a Justice of the Peace at the instigation of his father because of his propensity to jump freight trains.

The evidence was strongly against the idea that Miss Beecher had ever done anything to injure him or anything which would reasonably cause resentment in his mind. He had not gotten along well in his studies after going into her room, had been more or less disorderly, and she, at the suggestion of the principal, had seated him facing the wall with his back to the rest of the school. She had occasionally sent him up to the principal, who had sometimes flogged him.

On the night of the deed Jean was seen walking up

the street with Miss Beecher at something after seven o'clock in the evening; before eight o'clock he was at home in his father's house; there he was given an errand to do and went down the street, returning shortly; spent some time in reading and then went to bed. The next morning he was at his place of work as already mentioned. The wrench which had been seen in his pocket was found near the scene of the murder. These are the only known facts bearing upon the case, previous to his own confession. For further items of evidence see the hypothetical questions propounded by the prosecution and by the defense—Appendix, pp. 109–138.

The fact that he was the last person seen with her, that the monkey wrench at one time seen in his pocket was found at the scene of the deed, that he left his place of work and went down the railroad track toward Newport, was sufficient to arouse suspicion. It is more than doubtful whether the evidence could have resulted in an indictment by a grand jury, and practically certain it never could have resulted in a conviction. The absence of any real motive for the act would have been fatal to such an attempt. The absence of evidence of a prearranged plan is also a serious lack. It is true that, when we have the confession and the later explanations, the presence of the monkey wrench in

his pocket and his words that he "had use for it" sound like a prearranged plan, and yet there is no real evidence here. He might have had the monkey wrench for a dozen purposes and have given the same answer. Perhaps his threat to get even with her, his remark "that if he had a revolver he would shoot her," may be considered more serious, but certainly no jury could convict him merely on the basis of such statements.

It is reasonably certain then that, had he not confessed, he never would have been convicted even if he had been indicted. Let us now examine the confession.

Gianini's Confession: Jean Gianini, being duly sworn, deposes and says he resides in the village of Poland and is sixteen years old; deponent further says, "I went to school to Lida Beecher and had trouble with her and wanted to get revenge.

"I met her above the hotel and walked up the street with her up beyond the stone quarry; she had been a coming to see my folks about school and was a coming up to see them last night and I told her they lived up the hill, and when we got up there on the left side of the road, I hit her with a monkey wrench that I got out of my father's barn. I had the wrench in my pocket when I went up.

"After I had hit her about three times with the wrench, I hit her with a knife several times, to be sure to finish her, and then I took her over in the lot; I dragged her by the foot; and then I went home and got there about 7 : 30.

"The knife I stabbed her with was one that belonged to my father and I took it home and put it in the pantry drawer.

"I left the wrench somewhere near where I hit her. When I hit her first, she did not scream but moaned.

"She said she thought it was quite a ways and she did not see any house.

"I was not afraid when I got home; I was just as happy as I ever was and didn't think anything about it as I thought I had revenge.

"I make this statement voluntarily and under no fear or threat and knowing the same may be used against me.

"JEAN GIANINI.

"Subscribed and sworn to before me this 28th day of March, 1914.

"FRED MOORE,

"*Justice of the Peace of Town of Russia.*"

In its main points the confession must be accepted as true. To refuse to accept it would be to admit at

once without further proof that the boy was crazy or an imbecile, since, if it were not true, it is inconceivable that any normal person would claim to have done such a deed. It is accepted then by all that Jean Gianini killed Lida Beecher on the night of March 27th, 1914. There is no difference of opinion on that point. It is now only a question of his responsibility.

We may now review the facts and see what is the evidence: first, that he is an imbecile; second, that being an imbecile, he did not know the nature and quality of his act and that it was wrong.

Is Jean Gianini an imbecile? What is an imbecile? We cannot expect to agree upon the question of whether Jean is an imbecile until we agree upon the definition of imbecile. There are various ways of designating this type of individual. Imbecility, as used in law in this country, may be defined as "the state of mental defect existing from birth or from an early age, due to incomplete cerebral development, in consequence of which the person affected is unable to perform his duties as a member of society." The high-grade imbecile, such as the person under discussion, feeble-minded as he is called in England, or the moron as we are coming to call him in the United States, is one who is "capable of earning a living under favorable

circumstances, but is incapable from mental defect, existing from birth or from an early age, (*a*) of competing on equal terms with his normal fellows, or (*b*) of managing himself or his affairs with ordinary prudence." These definitions were formulated by the Royal College of Physicians of England, and accepted by the Royal Commission on the Care and Control of the Feeble-minded.

We may further designate this type of individual by saying that he has the mentality of a normal child of from three to twelve years of age. These age limits have been determined by examining thousands of the inmates of institutions for the feeble-minded and comparing with normal children. The inmates of the institutions are there because they were not capable of managing their own affairs with ordinary prudence, because society has discovered that they could not take care of themselves; they are weak-minded; they must be cared for by the public. Careful examination of such persons as have been determined by experience to be incapable of managing themselves shows that they range in intelligence, as before stated, from three to twelve years. There are practically none in these institutions that have a mentality above twelve. Those under three are called idiots.

Considered from the standpoint of the growth and the development of the child, we say that the imbecile is a case of arrested development; he has stopped growing mentally, and has stopped previous to the age of twelve, so that no matter what may be his actual age his mentality is that of a child under twelve years.

In the case of Jean Gianini, although he is sixteen years old, he has only the mentality of a child of ten. Or, if a possible error of two years were allowed, he would still have only the mentality of twelve and would be an imbecile. As a matter of fact, there is probably nothing in the whole career and history of Jean Gianini that is inconsistent with a mentality under twelve; and on the other hand there are numbers of things in evidence in connection with his crime that are so thoroughly typical of high-grade imbeciles that any one with experience with this type of person can have no doubt about it; but it is our purpose to show this by an analysis of the case. We must first attempt to remove some of the difficulties in the way of this view.

First, why does it seem absurd to call Jean Gianini an imbecile? Mainly because in the popular mind the term imbecile connotes only the low-grade imbecile, the person who shows in every movement and action, if not

in his very face, that he is "lacking," is "not all there," is "not quite right," or whatever may be the expression that we apply to those unfortunate ones, of whom there are, sad to say, always one or more in every community.

Jean Gianini is not of that type; he is a *high-grade* imbecile; he is of the grade that is only recognized by those who are intimately familiar with imbeciles of all types. He is only discovered when we make a close comparison between him and normal boys of the various ages. We may perhaps liken it to the question of tuberculosis: the average man never recognizes a fellow being as suffering from consumption until he is afflicted with a cough which does not yield to treatment, is constantly expectorating, gets thin and pale, and has other marked outward symptoms; the average person would not find more than one or two consumptives among a hundred persons; the expert physician, however, experienced with tuberculosis, recognizes many more by signs and symptoms which he can describe with great accuracy, and when he is allowed to apply his physiological tests and his clinical thermometer and his microscope, the number increases enormously, and he assures us that every seventh person will die of tuberculosis.

It is hard then for many people to accept the ver-

dict that Jean Gianini is an imbecile, largely because they do not realize what a high-grade imbecile is.

A second reason is found in the fact that we insist upon believing the unbelievable. We view a crime like the one under discussion and say frankly, "It is unbelievable that any reasoning, intelligent person could commit such an atrocious act," and yet we believe that this boy did; we believe that such a grade of villainy exists and that it can suddenly appear in a boy who never before manifested anything approaching it. The fact is, that our instinctive revulsion against such a thought is the correct view. The fact that Jean Gianini committed such a crime is itself the strongest kind of evidence that he is not a normal boy. But turning from imbecility in the abstract, let us examine concrete instances in the life of Jean Gianini, for we shall find there the best possible illustrations of the characteristics of an imbecile.

We may begin at the most dramatic point — the crime itself. Since we know practically nothing of the crime except through his admissions, we will begin with the confession. And first, why was there a confession? It is safe to say that there is not a sensible man or boy the country over who, knowing the facts in the case, would not say, "What a fool Jean was to

confess!" Nobody but an imbecile would have confessed under those circumstances; they had no evidence against him, nor did they pretend they had; he testifies that they told him that they thought he was guilty of the crime; they did not pretend that they knew he was guilty; there were no third-degree methods used; they had taken his clothing off and examined him, but they had not found any blood or any evidence, and the clothing had only just been removed when Jean began to tell his story. He had not been promised any immunity if he should confess; in fact, he had been told that anything that he said would be used against him, but still he persisted in telling the whole story. But we do not have to rely upon the fact that it looks foolish to us for him to have confessed, because we have the fact, well known to all who have to deal with imbeciles, that it is characteristic of them to do just this thing. They do not always confess, it is true. It seems to depend largely upon how proud they are of their deeds — and frequently the more atrocious these are, the prouder they are of them. It is perfectly clear that such was the case with Jean. He made some little attempt to get away, at least he made what appeared like an attempt to get away; there really is no evidence that he was doing anything more than he had done many

times before, going away from home to seek work elsewhere, with that *wanderlust* which is also characteristic of imbeciles. He walked down the railroad track toward Newport, not going very fast, not taking any precautions to avoid being seen, and when met by some one whom he knew, he came willingly back to Poland.

There is the highest probability, perfectly clear to one who understands imbeciles, that almost from the time the deed was done he had a strong desire to tell somebody about it, to brag about it; but a certain instinct, a certain feeling that he ought not to be caught, probably held him back. But when at last he was taken back to Poland and into the presence of the Deputy Sheriff; when his clothes had been removed and he thought his story would get into the papers and he would become notorious; then he began to talk. In spite of all the warnings and declarations that he would suffer for it, he talked. At this point it is important to remember that he is talking now to be heard; he is not confessing in order to escape punishment, he is talking because he is proud of what he has done; he wants to boast, wants to be talked about and written up, wants to be notorious, a great criminal, as is evidenced in the course of the trial. Remembering this, we *cannot believe all that he says in his confession.*

As already stated, in so far as it relates to the basal facts of the crime, it is undoubtedly true; but when it comes to the finer details of what he did, how he prepared, and what he claimed was his motive, we greatly err if we accept everything he said. It is not in the sworn confession, but it was in evidence that he said he sharpened the knife for the purpose; the fact that he said he sharpened the knife for the purpose should have no weight. It is precisely the kind of thing that he would put in for effect. In fact all that he said after the deed as to arrangements or plans or details must ever be questioned unless his statements can in some way be corroborated, for this tendency to elaborate is so strong that there is no possibility of putting any trust in his words.

It is worthy of note that whereas the defense introduced many witnesses who testified to Jean's sayings and actions that showed silliness and indicated childish intelligence, the prosecution neither rebutted this nor produced witnesses testifying to anything in his previous conduct that gave evidence of good judgment or intelligence appropriate to his years, or that he had any moral development that would be normal for his age.[1]

The evidences of his pride in the deed are scattered

[1] See prosecution's hypothetical question — Appendix, pp. 131–138.

throughout the testimony. For example, at one time he said, referring to the deed, "You would not think anybody could do a deed like that so quick, would you?" When asked how he could get Miss Beecher to go so far up the hill in the dark with him, he replied with a good deal of pride: "That's easy! I told her my father was building a house up on the hill and we went up there."

This leads us to another precaution which must be borne in mind in considering this case. If Jean is an imbecile, then all our previous conceptions must be changed, since the conclusions that we naturally draw are based on the assumption that these facts relate to a normal man. To illustrate: if Jean were a normal boy of sixteen, the fact that he inquired as to the time of Lida Beecher's being at the Post Office, that he talked with her the day before about her promise to go with him to see his father, the fact that he went off with her that night, that when he reached his father's house, he lied and said his father lived up over the hill and led her up there, and then, as he said, struck her with the monkey wrench, and so on, would all indicate premeditation and planning and forethought; but the instant we conclude that Jean is an imbecile, then these facts indicate nothing of the kind. It is not denied that such

may have been the case, or that it is impossible for an imbecile to carry out such a plan. But it is claimed that there is no strong presumption that such was the fact, because the result can be accounted for in another way. Jean being an imbecile, *it is entirely possible that he had no premeditation of murder at all*, that he not only did not grind that knife for the purpose, but that he did not have the monkey wrench in his pocket for the purpose. On the contrary, it is possible that as he walked up the hill with Lida Beecher he had no more thought of killing her than of committing suicide. Indeed, it is much more plausible from all we know of imbeciles, and of boys of his physical development, that there was an entirely different purpose. That purpose was probably sexual. The writer is not alone in this thought. Hardly any of the persons with whom he has talked of this crime has failed to ask the question, "Was there any sexual offense in the matter?" The absence of any evidence of assault of this character has been a surprise to many persons; but it again is no surprise when we remember that Jean is an imbecile; we know also that he is a masturbator.

While the writer has no theory to put forth in regard to this crime, yet, for the sake of clearness and as an illustration of the imbecile type, let us assume a plausi-

ble hypothesis; that is to say, an hypothesis which may fit the case and is entirely plausible from the standpoint of imbecility.

Jean was sixteen years old, an age when sexual passion is strong. It is the middle of the great adolescent period. The new physiological function of sex is established, great psychic changes have occurred. The boy is dreaming dreams, the imagination is active. In the normal boy this means the evolution of ideals, ambitions, moral and religious ideas, attention to dress and appearance, interest in the opposite sex. In the case of the morally well-endowed boy, the sex impulses which have strengthened with the development of the physical potency find their outlet in a kind of vicarious functioning in the shape of polite and friendly association with his girl friends, in chivalric attentions and devotions, with more or less definite plans for future marriage and parenthood. In those with little or no moral principle we see the impulse leaping over the social conventions and attaining complete sexual gratification illegally.

With the imbecile the case is different. The fires of sexual passion may burn as vigorously as in the better endowed, but he lacks both the power of control and the courage and ingenuity to overcome the social

barriers. He masturbates. This banks the fires somewhat and requires no courage. If stimulated by association with girls, he makes crude and imbecilic plans for conquest. Lacking moral development and ignorant of the more subtle means of accomplishing his purpose, he may resort to violence in some one of the many possible ways. Often he is not conscious of what it is that is driving him and hence does not know where satisfaction lies. Under these conditions his violence may show no outward signs of being sexual. It may show every degree from rough horseplay with girls, such as pushing, pulling, grabbing hat, cloak, or other articles of dress, bantering, teasing, and other forms of personal contact, up to physical injury, torture, and even murder.

Volumes could be written — indeed volumes have been written — showing the tremendous force of this sex impulse at this age, and the multifarious ways in which it expresses itself — many of them not showing any of the signs that are usually considered as indicating a sexual disturbance. That is to say, such acts are, by the uninitiated, not considered sex acts at all. One incident of this kind is in evidence. "At one time Jean took two little girls to a piece of woods and started to take their clothes off, and when asked why he did it,

said he was going to play Indian and that Indians were naked." Dismissing the possibility that his explanation was invented to conceal a definitely conscious sexual impulse, let us admit that he gave his real reason for the act. Still it is clear to all who are familiar with sex psychology that the subconscious reason for playing Indian in that way was a sexual one. The procedure also shows a lack of judgment and appreciation of the proprieties which argues strongly for mental deficiency — especially as he was then between ten and twelve years old. (For further items the reader is referred to pp. 113–120 of the Appendix, where the hypothetical questions have summed up the testimony.)

The imbecile is a coward. Jean Gianini is an imbecile. Unconsciously impelled by that strong instinct he seeks the company of Lida Beecher. As a matter of fact her friend, Miss Clark, testified that Miss Beecher had been annoyed at his attentions. He contrives an excuse to get her to come up to his house; when he reaches the house, he makes another excuse to get her to go farther, not, as generally believed, with the purpose of murdering her; perhaps only blindly following that instinct of sex and desiring to be in her company; more probably with the half-conscious purpose of satisfying his passion if he could

find a suitable opportunity. They walk on; where they were going or how far they would have walked no one will ever know, but there came a time when for some reason her suspicions were aroused, or at least her common sense told her that it was foolish to go farther. Of course we have nothing but Jean's statement, which may be true or may be false; instead of the simple statement that she thought she would go back as she saw no light, there may, for all we know, have been a strong argument; he may have made improper proposals which she resented; this led to blows with the fatal result. We have no means of knowing what actually took place at that spot. But even taking Jean's own account, when she remarked that "she thought she would not go any further," he saw that his plan was frustrated. Then he struck her with the monkey wrench which he happened to have in his pocket — for what purpose no one knows. Having struck her once, it was easy to strike the second and the third time. It was only natural for an imbecile to keep at it, — "finish the job" as he expressed it. According to the evidence he struck her with the knife approximately twenty-four times, finally hitting the jugular vein in the neck, as a result of which she probably bled to death.

As already stated, the writer has no desire to advance this as *the theory* of the deed. But if Jean is an imbecile, this theory is fully as good as that upon which the prosecution worked, and it eliminates entirely all necessity for elaborate planning. Up to this point we have shown that the fact of a confession and the character of the confession, both difficult to explain on the basis that Jean is a normal boy of sixteen, are entirely clear and perfectly characteristic of a high-grade imbecile.

Let us look now at his actions immediately after the deed. It is in evidence that Jean said he took the murdered girl by the foot because there was no blood there and he did not want to get blood on his hands for fear they would take his finger prints. Holding her by the foot, he dragged her out of the road behind some bushes and left her in the snow. He then went back into the road, making new tracks, which he made no effort to cover. Nor did he make any effort to cover the old tracks or the blood spots that were left along in the snow. Neither did he make any attempt to hide the hat nor the umbrella nor the broken comb which were left in the road; his care to take her by the foot where there was no blood is cited as evidence of forethought and judgment; but what shall we say

of his failure to cover up his tracks when it was easy to have done so!

Again we must remind the reader that we have nothing but the boy's testimony as to the fact that he took her by the foot or to explain why he took her by the foot, but in accepting his testimony as true there is nothing incompatible with high-grade imbecility.

The one peculiar thing about Jean is that he has read more than most imbeciles even of this high grade. But this peculiarity does not save him from being an imbecile, since there are cases of imbeciles who have read as much or even more than he. Furthermore, there is plenty of evidence in the case that Jean's interest in reading has gone along the line, childlike, of crime. The various experts who examined him told of his talking about the case of the New York gunmen, of the Pomeroy case, of a murder in the South, and possibly others. He inquired about Mahoney, the would-be assassin of Mayor Mitchell. In connection with these crimes his reading of finger prints had made the same impression upon him that it would have upon any boy. He remembered what he had read and perhaps acted upon it, at least talked about it when the opportunity came, and pretended that he considered it in his action.

It needs no argument to show that all the rest of his conduct in leaving things as he did was imbecilic. Even many a high-grade imbecile would have been much more thoughtful and more careful to cover up the tracks in the snow. That Jean did not do so is in itself almost an unanswerable argument that he was an imbecile.

He then went home, and having washed the knife in the snow, put it in the pantry drawer. No evidence was produced, so far as the writer knows, to prove that this was the fact; we do not know whether the knife belonged in the pantry drawer and he put it back, or whether it belonged in his pocket and when he was through, he put it back in his pocket or put it somewhere else. Again, assuming that he told the truth, he certainly ran the risk of being questioned as to what he had been doing with the knife. He then went on an errand, and, according to his statement, went down to the railroad, hoping to jump a freight train. When he found the freight had gone, he hurried back home. These actions according to the prosecution indicate careful planning and a desire to get away; realizing the enormity of his deed he wanted to get out of town. Surely no normal youth of sixteen would have failed to get out of town even though he had missed the freight train; but his

conduct is perfectly characteristic of an imbecile. One simple thought having failed to materialize, without planning further he goes back home, acts as no one but an imbecile could under such circumstances,—goes to bed, sleeps soundly, gets up the next morning, and goes to work. Then he makes another effort to get away. But how crude an effort it is. He walks quietly along the railroad track and, as already stated, makes no attempt to hide, but passes the trackman and goes into the station at Newport. When he meets a person from his own town, comes promptly and quietly back home. Surely an act much more befitting an imbecile than a normal boy of sixteen!

The writer was asked upon the stand whether these incidents indicated to his mind that Jean had intelligence and had planned this thing carefully. The answer was emphatically, "No." At every turn they indicate an imbecile. We could cite many instances of imbeciles in our institutions who have done things of exactly the same character. Our high-grade boys frequently plan to run away, and often their plans are much more elaborately conceived and much better carried out than Jean's was.

In speaking of the confession it may be noted also that not infrequently our boys when they have made a

plan to run away cannot keep it until they can carry it out, but make a confession. They go to some attendant or officer and, without any compulsion, actually tell of their plan. In this way a great many times their purposes are frustrated. When two boys plan to run away, it is rare indeed if they carry out their scheme; it is almost certain that one of them will confess to somebody.

Jean manifested throughout that love of display and notoriety, that longing to be the center of observation and talk, which is so characteristic of imbeciles. He asked the alienists who were examining him if his picture would be in the paper and what the people were saying about him. According to the testimony of the experts who examined him in jail, every occasion on which he was examined was regarded by Jean with pleasure, and his only thought apparently was that he was the center of observation. Instead of showing some realization of his crime and that he was exerting himself to make an appearance that would be favorable to his case, all the evidence was of the opposite character. None of the witnesses for the prosecution were able to hide the fact that he was light-hearted and frivolous, and, in a word, "showing off," throughout these various examinations.

Throughout the whole time of the writer's examination of him Jean never for one moment evidenced by word or action any thought as to how his conduct or his answers to questions would affect his case. As was pointed out by the defense, quite in keeping with his mentality was his statement to the experts employed by the prosecution, that he had been told not to talk, in spite of which he talked incessantly and told everything that they wanted. The fact of the matter was that his desire to show off so far overcame any thought of self-preservation that he talked and acted freely in spite of his lawyer's caution that he should not answer questions. His conduct in the court room throughout the trial was that of an imbecile, of a child, who had no realization of the predicament that he was in and no purpose to make a good appearance. He was in the limelight and he enjoyed it. Even when the most gruesome details of his deed were being recited, he evidenced no feeling of horror or sorrow or fear; on the contrary he was indifferent, and frequently even laughed at the incidents that were related. He showed no excitement after he got home that evening; he slept well. His only comment on his prison cell, which to a normal person would have been loathsome in the extreme, was that it was better than St. Vincent's, where he had been at

school. Even when the experts introduced by his own counsel were examining him, and when, had he been intelligent, he should have known that it was to his advantage to make the best possible appearance, to give them every possible help, yet when his dinner was brought into his cell, he could think of nothing but eating and ignored the people who had been sent to help him. As one of the experts testified, "As between soup and safety, Jean prefers soup."

These facts and circumstances alone are enough to satisfy any person who is familiar with the character of the inmates of our institutions for the feeble-minded that Jean was an imbecile and really belonged in an institution. But besides these circumstances several witnesses were introduced who testified to the curious and childish actions of Jean in his past history. Quite recently, he had tried to catch pigeons by putting salt on their tails. The prosecuting attorney called attention to the fact that almost every man remembers going through the same experience, but it may be safely asserted that this is not done by any normal boy after the age of twelve. It is a childish act, and indicates a mentality of less than eleven.

Peter Black, the village blacksmith, testified that some one sent Jean to him one day for "strap oil";

that he carried out the joke by slapping Jean with a strap, but was unable to make him see that the whole thing was a joke. He teased and bullied the other children in a way that is characteristic of the high-grade imbecile. Mrs. Anna Newman testified that he was a restless boy, and that sometimes he would answer her questions and sometimes not. Every superintendent of an institution for the feeble-minded would instantly recognize these characteristics as common among his inmates. The reader will find more of these incidents in the Appendix, pp. 113–119.

One of the unique features, so far as court procedure is concerned, was the introduction into the case, of examinations by means of the Binet-Simon Measuring Scale of Intelligence. The writer's examination of Jean consisted largely of the use of these tests, and as a result he estimated his mentality at approximately ten years of age. It was somewhat difficult to estimate his mentality with the usual exactness since others had already used the tests, and it was impossible to say how much Jean had learned from his previous examinations. As a matter of fact, in some cases at least, he had not profited by the experiences which should have helped him greatly had he been a normal boy. For example, one of the tests is to draw from memory a diagram which

he has been allowed to study for ten seconds. It is clear that if one were given this test two or three times, at the last trial he should have a pretty good idea of it and be able to draw it correctly. Although the writer's use of this test was in the last of the series of those who tested him, yet he did not succeed in drawing it. This is usually drawn by a child of ten years. When asked to repeat a certain sentence, he replied, "Oh, I have been asked that a hundred times." But in spite of the fact that he had heard it several times he failed to remember it, and yet this sentence is generally remembered by a child of twelve.

This is not the place nor is it necessary to discuss the Binet tests themselves. A word, however, may be said as to why the experts for the prosecution did not get the same results with the tests that those of the defense obtained. Also it seems necessary to make a brief explanation, since the prosecuting attorney failed so markedly to understand the tests in spite of the fact that he had had the instruction of one of his own experts who used them. One of the prosecution's experts told the writer that he did not ask Jean any questions except those in the twelve-year list, and he "seemed to do those satisfactorily." There are two sources of error in this. In the first place, Jean's

failures were not only in the twelve-year, but in the eleven and ten. Secondly, if Jean seemed to do the twelve-year tests correctly, it could only have been because they were wrongly used. The Binet Scale is not, as the prosecutor insisted on stating, an "arbitrary system." It is not a set of questions to which there are definite and fixed answers that are correct, and from which any deviation is marked a failure. Nor is it a set of questions the answers to which can be judged as to their correctness by the so-called "common sense" of the investigator. To illustrate: Jean was asked to give the definition of the word "charity"; he said, "Charity is giving." The prosecuting attorney insisted that this was a correct answer, because, as he said, "Charity *is* giving." This is mere sophistry. It is not a question as to whether "charity is giving" is a theoretically correct answer to the question; the important point is, that such an answer is *not the kind of answer that is given by twelve-year-old children*. This has been proved by asking hundreds of twelve-year-old children to define "charity." Practically 75 per cent of such children include not only the idea of giving, but the other necessary idea of giving to some one who is in need. The answer, "Charity is giving," is characteristic not of twelve-year mentality, but of something

under that, — ten or less. So throughout the system the scale must not be judged by what seem correct or incorrect answers to the inexperienced adult. The value of an answer can only be known by knowing the character of answers that are given by children of the various ages. The point is not always that this answer is or is not technically correct, but that it is not the kind of answer which a child of the specified age should give. Therefore, it indicates that he is not of that age, but below it. This was the error into which the prosecutor and his alienists had fallen in their use of the tests in the case of Jean Gianini.

Jean's school record was the serious stumblingblock to many persons who, from the facts, notably those already cited, were inclined to think that possibly he was an imbecile. To many of these persons that record seemed to indicate a normal boy. The teachers and the principal testified that he did his work well through the fifth grade and got excellent marks, even getting 100 per cent in some studies. They lost sight, however, of the fact that Jean was fourteen or fifteen years of age and in a grade which he should have been in at eleven, namely, the fifth.

As a matter of fact, Jean's school experience, when taken as a whole, is most confirmatory of his imbecile

grade. It was proved in court, but not fully appreciated, that Jean got along well through the fifth grade, but *when he went into the sixth grade, he failed.*

Professor Robinson testified that when Jean was transferred to Miss Beecher's room, his troubles began. The boy did not get along nearly so well after the change and he dropped back in his studies. His teacher was obliged to report him a number of times to the principal, who twice whipped him with a piece of rubber hose. Failing to make his studies under the new standard, he was made to occupy a special seat apart from the other pupils, at the instance, if not the actual order, of Miss Beecher.

The witness further testified that in the last days of his school life Jean dropped, *to a very marked degree*, in his standing in his studies. This falling off in Jean's ability was *attributed to his teacher.* As a matter of fact, the falling off was due to the fact that Jean had *reached his limit* in the fifth grade. He attained to that height because of a good memory, which is characteristic of many imbeciles and is in no way indicative of normal intelligence. It is also very common for children of this type to get through the fifth grade and fail in the sixth. They have mentality enough to carry them to that point, but not farther.

It is a satisfaction to realize that Jean's failure in school with Miss Beecher is in no way due to the inefficiency of his unfortunate victim. It was due simply and solely to the fact that Jean was an imbecile and had reached his limit. These two facts of a good memory and of good school work in a few school grades have deceived many people as to the intelligence of a child.

It should be remembered that many imbeciles do not show their defect until at the age of eleven or twelve when they are in the fifth or sixth grade.

One of the witnesses for the prosecution said that he considered that Jean was normal and that his apparent backwardness was due to lack of schooling. This is a common error in all such cases. If asked why a boy should be backward through lack of schooling when he has been to school and has had every opportunity to learn, it is common again to fall back upon the idea that he has not studied. He has been a wild, wayward boy, playing truant, more or less, and has never applied himself, therefore he is behind his grade and is dull and backward. Again, while not denying that there are children of perfectly normal intelligence who seem to be misfits in school or who seem more interested in other things than in their school work, or children who will not study because of dislike for the teacher or for

various other reasons, yet the reader must be reminded that a study of the high-grade defective shows that he is continually being confused with these very exceptional children who have the ability but who do not study. In other words, when a boy does not get along in school, even though it is evident that he does not study, the strong probability is that he does not study because he has not mind enough to appreciate the work, to understand it, hence to have that highest of all incentives to work, success. The fact that the majority of boys do get their lessons and get along well in school should be a strong argument that there is something seriously wrong with those that do not succeed.

It may further be asked: How does the fact that the boy has not succeeded in school affect his examination by the Binet test? Experience has shown that the test is affected but slightly. In other words, the mind develops regardless of school and school training. As long as we ask only such questions as call for a general intelligence and do not call for specific school instruction we are reasonably independent of such instruction. As a matter of fact, nearly all of the questions of the Binet Scale are free from this objection. Some of them, it is true, are a little helped if the child has been to school and correspondingly hard if

the child has not been to school; but, on the whole, they do not affect the final rating to any serious extent. This has been proven repeatedly by normal children who, on account of sickness or for other reasons, have not been to school, and yet can pass the Binet tests for their own age.

We must now turn to the question of cause. If we can account for Jean Gianini's imbecility, it will be much easier to believe in it. Much has been written on the subject of the causes of feeble-mindedness. Certain fundamental principles have been agreed upon. It is now known that at least 66 per cent of feeble-mindedness is hereditary; that is to say, the individual is feeble-minded because he comes from stock in which feeble-mindedness exists. There is another group in which there are practically no other feeble-minded persons in the family or among the ancestors so far as can be discovered, but there is, on the other hand, a great deal of bad physical history; there may be epilepsy, alcoholism, insanity, or other serious physical disturbances. Finally, we have a group in which there is history of some accident, either to the child at the time of birth or after birth, or to the mother previous to the birth of the child.

In Jean's case we have no history of accident or

injury to the child himself. The pedigree or family tree has not been worked up and we do not know what there may be. It was in evidence that the grandfather was born on the south side of the Alps; and there was some slight attempt to imply, since cretinism is very common in that region, that possibly there was some cretinous condition in the family. All this is not impossible; and if it existed in the grandfather or even in the great-grandfather, such a condition might reappear in the grandson in the form of imbecility; yet in view of our present knowledge, or rather our lack of knowledge on this subject, this line of argument is too vague to enable us to draw any conclusions.

The fact that the mother of Jean was insane and alcoholic justly had great weight. Before her first child was born she broke down mentally and was probably never "right" after that time. The first child lived to the age of seven and from the description was clearly an idiot. The second child is entirely normal. Jean, who is the third child, did not talk until he was five years old.

Our general studies have not yet gone far enough, and certainly our study of this particular family is far from sufficient, to enable us to decide whether this is a

matter of heredity or whether we shall say that Jean's condition as well as that of the first child is traceable directly to the mother's insanity or to her alcoholism.

For the present purpose, of course, it does not matter. We see in these facts, whether we regard them as causes or merely as symptoms of a deeper lying cause, sufficient reason for Jean's being an imbecile. There is every reason to believe that Jean Gianini is an imbecile of high grade. The next important question that arises is a legal one of whether, being an imbecile of high grade, he knew the nature and quality of his act and that it was wrong.

Before discussing this let us consider two other cases — after which we may discuss the general proposition of whether high-grade imbeciles know right and wrong.

CHAPTER II

THE CASE OF ROLAND PENNINGTON

On November 7th, 1913, Lewis S. Pinkerton, the manager of a certain farm in Delaware County, Pennsylvania, suddenly disappeared. As it seemed probable that he was the victim of foul play the detectives set to work and in due time arrested George March, the dairyman on the farm, and Roland Pennington, a farm laborer. Suspicion was directed to these two men largely through the testimony of the woman who was supposed to be the so-called common-law wife of March. At his trial it was shown that he had another wife living, and consequently she did not even have that as a claim upon him. This woman had heard groanings from the direction of the barn, and later when March came into the house, had noticed blood on the towel and on his clothing.

The body of the lost man could not be found. After being taken to prison March accused Pennington of the crime, admitting that after the deed was done he as-

ROLAND PENNINGTON.

(By permission of "Alienist and Neurologist.")

sisted young Pennington in disposing of the body, because, as he said, he was afraid that he himself would be accused of the crime. Having made this admission, he took the officers to a wood some miles away where the body had been buried in a rude, shallow grave.

When Pennington was confronted with March's accusation, he too made a confession, which, however, implicated March quite as much as himself.

March was tried in Delaware County, and convicted of murder in the first degree. The defense was, in accordance with the above statement, "that he had nothing to do with the crime itself, merely assisted in disposing of the body."

Pennington's trial occurred in June, 1914, when he also was convicted of murder in the first degree. The defense in this case was imbecility and irresponsibility. Although the jury did not accept this view, the case is a most interesting one from the standpoint of criminal imbecility.

The story of the crime is probably best given in Pennington's own words, since his confession has all the marks of truthfulness and was evidently accepted by the jury in the March case. It was almost exclusively on the strength of this testimony that March was convicted.

Statement of Roland Pennington as to the Pinkerton Homicide

I, Roland Pennington, being duly sworn according to law depose as follows:—

I went to work at the Wilson farm about October 7th; I boarded with George March and his wife; George worked on the farm too; he was the butter maker; from the time I went to the farm, George was always kind and good to me; George had charge over me when Lew was not there; George would loan me money when I wanted any, and several times took me to Gradyville with him, when he would take me over to the hotel and treat me to a drink; about a week or two after I went to the farm, George had a fight with his wife at the dinner table; George told her she was too intimate with Lew and a painter, who was working there; she talked back to George and George threw things at her; after dinner George told me that what he said to his wife was true; that was the first I knew about George's trouble with his wife; after that George talked to me about his wife all the time; once I told George I would like to go West; one day George said he was going to take the painter to law, and get some money from him, and if I would stick by him, he

would divide up with me and take me West. Afterwards he talked more about Lew and his wife; one day he said if it didn't stop, he would break up, sell the furniture, and go West, and that if I would save my money to help out, he would take me with him; one day George's wife was away all day, Lew was away that day too; they came home about the same time; George told me afterwards that he accused his wife of being with Lew; that night Lew came in the cow stable while George and I were milking; they had some words, but I could not hear what they said; George looked pretty mad and Lew was excited; George told me afterwards that he had accused Lew of being with his wife and Lew denied it; he also said it was as much as he could do to keep from getting up and smashing Lew in the face. On several different times when we were working together, George said that if Lew didn't stop going with his wife, he would put a stop to it; George had charge over me when Lew was not at the farm, and one time when I asked Lew for some money to buy shoes, he would only give me two dollars, and gave five dollars to George to buy shoes for me; after the first of November, George said, "Lew hasn't paid me. I wonder why"; he said this on two or three different occasions; on Thursday,

November 6th, George came to me and said, "Well, Rol, Lew paid me to-day." I said, "Did he?" and he says, "Yes, he had a big bunch of money on him. Did you ever see a thousand dollar bill?" I said, "No, I never saw one." He says, "Well, neither did I. What figures ought a thousand dollar bill have on it?" I says, "I don't know. A thousand is one and three noughts after it." He says, "Well, I asked the Mrs. about it, and if that's right he had one of them on him." This took place Thursday afternoon about half past three in the stable. That night about quarter after five while George and I were separating the milk down in the milk house, George said, "How would you like to have that bunch of money Lew's got on him?" I don't remember saying anything to that. There was nothing more said about it that day. The next morning, George and I were separating the milk down at the milk house before breakfast, and George said, "Well, Lew will have that bunch of money on him to-day. Let's get it." I said, "What do you mean?" He says, "Why, do away with him." I says, "What? Kill him?" He says, "Yes." I says, "No. I won't kill him." He says, "Well, you start it and I'll finish it. I got a blackjack up at the house, I used one time myself to knock a man in the head with out West, to

get seventy-five dollars from him to come East on." He said he was in a bank in the West and saw this man get the money — the seventy-five dollars — and when the man came out, he managed to get a ride with him, and while they were going along the road, he hit the man in the head and knocked him out, and went on his way. I didn't say anything.

That afternoon, about three o'clock, George came to me in the milk house, while we were getting the milk buckets and cans ready to take to the barn, and handed me the blackjack and said, "Here's the blackjack; you can do it with that." I put it in my pocket. We then went to the barn. From then up to about five o'clock, while we were working about the barn, George kept saying to me, "Don't lose your nerve. The first chance you get after the workmen are gone, get him." Several times he said, "Don't miss your chance — Don't forget." Lew was away that afternoon. He came home while George and I were milking.

After we finished milking, we took the milk down to the milk house; then I went back to the barn to feed the horses. While I was feeding them, George came up from the milk house to feed the calf. I generally fed the calf. George seldom did it. In feeding the horse, I had to carry hay around from the old horse

stable to the new one. In going around for some hay, I met George right outside the old horse stable door. He said, "Lew will be around here pretty soon. You can get him then." After I had finished feeding the horses, I took the fork over to the old stable. As I was doing so, Lew went in the new stable. I met George at the stable door when I came out from putting the fork away. George said, "He's in the new horse stable; go get him." I went in and told Lew there was a nail in the last stall next to the box stall and that he had better look at it. He went up to look at it, and while looking at the place I told him, I struck him on the head with the blackjack. He turned part way around, threw up his arm, and said, "Hey, what are you doing?" I struck at him some more; he rushed at me and we clinched. This happened in the stall alongside a horse. After we clinched we got out into the passageway back of the horses. Lew soon got the blackjack away from me. As we came out into the passageway, I think I saw George near the door. He afterwards told me he heard when I hit Lew first and that he came in, and that while Lew and I were wrestling, Lew made a grab for him and knocked his glasses off. Lew and I tussled quite a while up and down the passage back of the horses; Lew was hollering all the time; I think

we went down once, got up again, and went down again, with Lew on top of me; then I got on top of him. At about that time he called for George; George must have gone out in the meantime, for when Lew called for him, I remember the door being opened and George coming in. He came up and asked Lew what was the matter, whether the horses kicked him. Lew said, "Yes, yes, help me." George stooped over and whispered to me, "Where is the blackjack?" I told him Lew had it. Lew then said, "George, you are no kind of a man." Whether George got the blackjack or not I don't know. He then went around by Lew's head and started kicking. I had my hand on Lew's head and the first kick George made he kicked my knuckles. I then left go of Lew and got up. While getting up George was continuing to kick him in the head. After continuing to kick him in the head after I got up, George went around and kicked and stamped Lew in the side. Then he stopped — and said as though to himself — "Which side is his heart on?" Then he started to kick him on the other side. After a while he stopped. I don't remember whether he said anything to me or not. Anyhow, George took him by the head and shoulders and I by the feet and we carried him into the box stall. Then George went

up to the house for a lantern. I waited for him at the stable door. He came down with the lantern and went in the box stall, felt Lew's heart, and then stood up and stamped him some more; then he searched him.

In tussling with Lew I had gotten blood on my coat, pants, and shirt. After George searched Lew, we left the stable, and I asked George where the overalls were that the whitewasher had worn. George said he thought they were up at the wagon house. We went there, but could not find them. George did find an old pair of Lew's pants and a shirt. He gave them to me and I put them on. While I was putting them on George went in the house. I went in later, went to my room, put on another coat, and went down to supper. George finished his supper first; got up and told the Mrs. he was going to Gradyville after some sulphur for the pigs. He then asked me if I wanted to go along with him. I said I would. Then we went to the barn; George got two bags in the old horse stable and put one inside the other. Then we went in the new horse stable where Lew was. George set the lantern down and told me to take hold of his arms and lift his head and shoulders. I did so, and George slipped the two bags over Lew's head and body. Then George tied a

cloth around the neck overtop the bags. Then he told me to hitch the horse Dick to the milk wagon. I did so. Then I returned to the new horse stable. George then said we will carry him up to the wagon. I had left it in front of the wagon house at the barn. George said, "We had better take him up through the barn." George took him by the head and shoulders and I by the feet. We carried him up through the barn. When we got to the wagon, George got some bags and put them on the floor of the wagon. Then we put the body in. Then we got a blanket and threw it over the body. Then George got two shovels and a grubbing hoe, and put them in the wagon. Then we drove away.

After we got started George said we would bury the body in Lauterback's woods. When we reached the road that he said led up to that woods, he said it was too near home and kept on driving. After driving for a long time we came to a pair of bars. He pulled up there and said, "That wood over there looks pretty good." Then he drove on a little piece further. Then he said we better go back to that woods. Then we turned around and went back to the bars. George got out there, handed me the lines, and he took down the bars. I drove in, he put in the bars, and led the way, and I drove on across a field, till we came to another pair of

bars. He took them out and then led the way across the fields to the woods. When we got there, George picked out a place; said he thought it would be an all right place. Then we dug the grave. Then we went back to the wagon, got the body, put it in the grave, and covered it up. Then we returned home.

That night George suggested that we clean up the marks in the morning. The next morning we got up early and cleaned up the marks on the floor and washed the walls. George said to make sure there would be no marks on the wall it would be better to whitewash it. He said he would do that and for me to go to other work, so I started to haul stone. George also said to take my clothes to the milk house and burn them. I did take them there on Saturday morning. George was there and I gave them to him. He said he would burn them. On Saturday, George came to me and gave me seven dollars and a watch and a ring which he got off of Lew when he searched him. He told me he had only gotten fourteen dollars and five cents and to pawn the watch and chuck the ring. I threw the ring away and took the watch to Philadelphia and pawned it at Carver Reeds on Market Street near Fifteenth Street for four dollars. When I saw George the next morning, Sunday, I gave him the pawn ticket and said

I would give him two dollars when I got the change. He said never mind that.

(*Signed*) ROLAND PENNINGTON.

Here again is a crime so abhorrent in its details that it is unbelievable. There is no excuse for it, no adequate motive, no justification whatever so far as the boy, Pennington, is concerned.

For March, it is easy to believe, as the jury evidently did believe, that he was actuated by what might be called an insane jealousy of the woman with whom he was living. We are familiar with the lengths to which such jealousy can lead a man. But why Pennington allowed himself to be made the dupe of this jealous man cannot be explained; it is absolutely incomprehensible on any theory that assumes that he is a normal boy of nineteen years.

It was in accordance with this feeling that some one raised the inquiry as to whether the boy was possibly a mental defective. This question having arisen, the writer was asked to examine him and give an opinion as to whether or not he was normal.

Accordingly the examination was made in the Delaware County jail in Media; this showed that the boy had a mentality of about eleven years according to the Binet Scale. He could not do any of the tests for age

twelve and failed on some of those in ten and eleven. This indicated an intelligence scarcely up to eleven.

Further examination by other methods, the circumstances of his life, his appearance, and his school history, all tended to corroborate this view. The boy was nineteen years old when he committed the crime; two years before he had left Westtown Boarding School, after an attendance there of two and a half years. When he entered the school, the teachers graded him as of a capacity equivalent to the fifth grade in public school; he, therefore, began sixth-grade work. He never got out of that grade. For two and a half years he studied and tried to pass. He was absolutely unable to do sixth-grade work. Sixth-grade work, it will be remembered, is about the grade for a twelve-year-old normal boy; thus we have a striking agreement between his school experience and his Binet tests. By the Binet test he is eleven; in school he cannot do twelve-year work!

Asked what he had done since he left the school, he said he had done "a good many things." Asked where he had worked, he said he did not remember all of the places. As a matter of fact, he had had exactly the career that the high-grade imbecile usually has out in the world. He either gets discharged from his positions

because of incompetency or he leaves because of his nomadic tendencies. The imbecile rarely stays long in a place if free to move.

In addition to the above, the reader will see many evidences of childishness in his confession. He talks like a child; he alludes to George March as a child would; he says, "He has charge over me" — "He was kind and good to me; he used to take me to Gradyville," etc. Even Pinkerton gave the money to March to buy shoes for Pennington. Again Pennington says, "George said he was going West and he would *take me with him.*" One cannot imagine a nineteen-year-old youth, or even a fifteen-year-old, talking in this way. By the time a boy reaches the latter age, he is in his own mind the equal of anybody. He would not say, "George took me." He would say, "We went." He would say, "I got along all right with George," or some other expression whereby he would assert his own manhood and not take the rôle of a child.

While in jail he showed no realization of the seriousness of his situation; showed no remorse for his deed; took no interest in his case. For example, he was told by his lawyer not to allow himself to be examined by any doctors without sending for his counsel; in spite

of this warning he allowed himself to be examined by four physicians at one time and by two at another, and never mentioned the matter to his counsel even after it was done.

In the confession made to the prosecuting attorney one notices, as in the one we have quoted, that he appears simple and innocent; answers the questions often in terms of the questioner instead of by a simple "Yes" or "No," which would be natural for a normal young man; he is uncertain and hesitates; he says, "I think," in a great many cases where it was strongly to his advantage to speak positively.

After the deed was committed he *took no care to remove the evidence;* everything that was done in that connection was done at the *suggestion of George March.* All the way through this part of the confession it reads — "He led, I followed," "I did as he told me."

Having satisfied ourselves that Roland Pennington is a high-grade imbecile, the next question is, even as an imbecile, why did he do this deed.

In the case of Jean Gianini we found that it was for revenge of a fancied wrong, that is, according to his own statement. If not that, it may have been a sexual matter. In this case neither motive applies, and we have only two possible theories. The theory of the state was

that it was for robbery. Indeed, Roland himself seems to admit that this was the motive. But this again is only a part of his imbecility. He was given a leading question by the prosecution and was weak-minded enough to say, "Yes."

As a matter of fact one finds it very hard to get any evidence from the whole situation that he really was lead by cupidity. There is no evidence of any elaborate plans in regard to money, either as to getting it or as to what was to be done with it when he got it. March had talked about a thousand-dollar bill, and asked Pennington how he would like to have "that bunch of money." Pennington says he does not remember saying anything in reply. This does not look as though it aroused any great emotion in him. Later March said — referring to the money Pinkerton was supposed to have "on him" — "Let's get it." Pennington asks, "What do you mean?" He is clearly thinking less of the money than of what he begins to dimly understand they are to do. When he understands that they are to kill him, he says distinctly, "No. I won't kill him." Never again is the subject of money mentioned. In all March's urging him to do the deed he never says, "Remember the money," or alludes to money in any way.

Perhaps we are begging the question. If Pennington were really intelligent and shrewd, he would not say anything in his confession that would supply a motive for the crime. Not only does the whole confession give ample evidence that he was not sufficiently intelligent to protect himself in this way, but the conclusion of the matter shows clearly that it was of practically no importance to him. After the deed, March gave him seven dollars! He said, "I thought there was more." That is all. He did not insist or complain. He accepted it calmly and without protest. He even proposed to give March half of the four dollars received for the pawned watch. Imagine a nineteen-year-old boy with full consciousness and responsibility killing a man for his money and being so complacent over receiving seven dollars! The theory is not convincing. Even the prosecution, whose whole case depended upon showing a motive, never pretended that Pennington made any stir because the amount was so small.

There is not the slightest evidence, external or internal, that the idea of getting money played any part in Pennington's share of the crime.

Why then did he consent to begin the matter which George was to finish? It is clearly a case of suggestion. A suggestion, it is true, which never would have worked

with a normal nineteen-year-old youth. With this weak-minded boy it is easily understandable. As we study the confession we discover that George March, either consciously or more likely unconsciously, used suggestion most adroitly. Undoubtedly he had learned, through association with Roland for six weeks, that this boy was very simple-minded and easily led. Having reasons of his own for desiring to get rid of Lewis Pinkerton, he first suggests the matter of money, hoping to appeal to Roland's cupidity. It will be noticed that he nowhere uses the word "murder" or "kill"; even the mild expression, "Make away with him," he uses only once. When Roland at one time almost takes fright and asks, "Do you mean kill him?" and he admits that he does and Roland says he won't do that, the older man lulls him to sleep by the suggestion, "Well, you begin and I'll finish it."

March tells a story about a blackjack; then he brings the blackjack and gives it to Roland, saying nothing except, "You can do it with that." Roland is so weak-minded that he takes the blackjack and puts it in his pocket. When the right time comes and the opportunity is near at hand, March stations himself at a convenient place where he will see Roland as he goes back and forth at his work, and for some little

time he constantly coaxes and dogs him, pouring into his ears a stream of suggestion such as, "You will have a chance pretty soon"; "Don't forget"; "Don't lose your nerve"; "Now you can get him"; "Now nail him."

It is an interesting little point, possibly only a coincidence but nevertheless a perfectly natural imbecilic association, that the one seemingly original thing that the boy did in connection with the matter was to invent a little trick in regard to the nail in the stall. It is quite likely that even this was suggested by George's previous expression, "Nail him."

Even the blow itself does not seem to have been given with normal vigor; having every advantage, — the victim bending over, Roland being behind him and with a blackjack which is capable of thoroughly stunning, if not killing at one blow, — he apparently did not strike with force enough to even produce unconsciousness. His victim was able to talk and to struggle for some minutes, until March, the companion in crime, came up and, as he expressed it, "finished him."

As to motive, then, we conclude that the defendant had none. He was acting upon the suggestion of George March. Even the poor mind that he had, which under other circumstances might possibly have

rebelled at such a suggestion, was lulled to sleep by this man of better intelligence for whom he had been working and who he had learned to think was "good and kind" and on whose judgment he thought he could rely.

Since the Pennington case is typical of the way weak minds work under control of normal minds, it will be worth while to analyze somewhat more fully this idea of *suggestion.*

How does suggestion work? Why does it indicate a weak mind and how does it affect our ideas of responsibility? Let us see.

We have already seen that Roland Pennington was under the control of another mind; we do not mean that he was actually hypnotized — a nonsensical plea that is sometimes brought into court cases. Roland Pennington was a victim of suggestion. An illustration will make this clear.

If I were to take a city man to a third-rail electric road and ask him to stand on one rail and put his hand on the third rail, he would resist the suggestion, because there would immediately come into his mind visions of himself burned to a crisp or instantly killed. But suppose I take a man who has come from the rural districts and who never heard of third rails. He has

lived, let us assume, in my house and worked under my direction a month and has come to regard me as a friend. We have worked together and talked together; I take him out and say, "Touch that third rail." Will he resist the suggestion? Not at all. Why not? What is the difference between the two men? The first has ideas about third rails. His past experience has filled his mind and memory with thoughts and with knowledge which instantly come to consciousness when I suggest touching the third rail. The other man has no such experience. He has known me long enough to have some faith in me. In fact from the very nature of things he is in the habit of doing what I tell him. I tell him to do this, and he does it.

Coming back to the first case, one perhaps can conceive that the city man and I might come upon the third rail under such conditions that he was not thinking of it. Instead of saying "third rail" to him I might say, "My! that rail is hot" and he would almost instinctively put his hand upon it to verify my remark. If he survived and could talk about it afterwards, he would say, "Of course I ought to have known and did know that was the third rail, but I did not think." That is the way suggestion works.

To illustrate still further, we may speak of hypnotism

itself. All of the wonders that are produced under hypnosis are to be explained in exactly this way. The subject is so nearly asleep that nothing gets into his consciousness except the ideas suggested by the operator. Accordingly he is utterly unable to resist any suggestion that is given him.

Now coming nearer to our problem, children are naturally very suggestible because they have not the experiences, the ideas. One may easily believe that an eleven-year-old child could be induced to touch the third rail. Furthermore, authority plays an enormous rôle with children. I might take my ten-year-old boy out for a walk. He knows all about third rails and would not touch one. But if I were to say to him, "Son, you can put your hand on this, because there is no current on," he would probably obey without question, because of his implicit trust in me. That confidence in a superior, either in age, intelligence, or position, is one of the characteristics of immature minds and one of the conditions that makes us all suggestible. In the hypnotic terminology again, this is the being *en rapport.* The hypnotized subject obeys the operator and no one else because it is the operator with whom he is *en rapport* — in other words, in whom he has confidence.

Now let us come to the situation. It is perfectly clear that Roland Pennington was under strong suggestion and that any vague concepts that he might have had of the wrongfulness of murder or of killing a man were very carefully allayed by the man who had the influence over him and who had the motive for this homicide.

The whole statement shows that Roland recognized George as a superior, as one in authority over him and at the same time as a friend, as one on whose word he could absolutely rely. It is a perfect picture of the child following the man.

CHAPTER III

THE CASE OF FRED TRONSON

Our third case is that of Fred Tronson of Portland, Oregon. What we know of the history of Tronson is brief, but amply sufficient to prove that he belongs to the group that we are considering. He had lived in Portland for two years and in that time had held seven different positions as elevator man. He was twenty-four years of age, when, in August, 1914, he met and became infatuated with Emma Ulrich, a stenographer who worked in the same establishment where he ran the elevator. He asked her to marry him, but she refused. Later he was arrested for threatening her and was ordered to leave town and not to annoy her any further. On November 16th of the same year he waited for her outside of her home with two loaded revolvers. When she stepped off the street car, he again asked her to marry him. She became frightened and ran toward her home. He followed her, shooting as he went. He followed her into her own house and there shot her

down. On Wednesday, December 9th, 1914, Tronson was tried and convicted of murder in the second degree. Oregon having abolished the death penalty on November 3d, only a second-degree verdict, which carries with it imprisonment for life, could be returned. The trial was very brief, and the jury returned within fifteen minutes. There was practically no defense, except the claim on the part of Tronson's attorney that the man was weak-minded and, therefore, in strict justice, should be placed in custody, not in the penitentiary but in some other institution more suited to his condition. He had been examined by two alienists and pronounced sane, but of low mentality. He was also examined by a psychologist who used a modification of the Binet tests, which showed him to have a mentality of nine years.

This rating obtained by the psychologist was confirmed in many ways. His mother said he had never been able to hold a job more than two or three months. He left school shortly before he was twenty, but we have no record of what success he had or what grade he was in. His conduct at the trial and before was that of an imbecile. When he was examined in the police station, he seemed to be in constant fear that some one outside would do him harm. When he had displayed

FRED TRONSON.

uneasiness about an open window, the detectives told how they closed it and sat between him and the window to assure him that no one in the street would harm him. During the impaneling of the jury and the taking of the testimony, Tronson sat slouching in his chair, with sunken eyes, glaring at each witness, and with his mouth hanging half open as though he barely understood what was going on. The deep lines in his face and the dark circles beneath his eyes gave a vision of sleepless nights and haunting memories. Like the other two imbeciles whom we have discussed, he made a confession. The following is his statement:—

Statement of Fred Tronson taken in the office of Detective Captain Baty on Thursday, November 19th, 1914, in the presence of Deputy District Attorneys John A. Collier and Thomas G. Ryan, Detectives Pat Moloney and Tom Swennes.

Question. What is your name?

Answer. Fred Tronson.

Q. How old are you?

A. Twenty-four.

Q. How long have you lived in Portland?

A. One year and seven months.

Q. What have you been doing?

A. Running elevators.

Q. Now, Fred, I am a deputy district attorney representing this state, Mr. Ryan here is a deputy district attorney, and these other men are officials and officers. You have been charged with a crime, and of course you have your rights. You have a right to make a statement here to me if you want to tell us what the facts are. You are not forced to make a statement, but you may do so if you want to. There isn't any use of your getting nervous, and there is nobody going to bother you here. You needn't be afraid. You cannot be forced or compelled to make a statement, and any statement you make must be voluntary. Do you want to make any statement about this shooting affair?

A. Yes.

Q. You may go ahead and just tell me what happened, commencing at the first of it, and tell me how it came about.

A. Well, that time I accosted the girl in the street, it was last August the 3d, I asked her if she would have me and she didn't give me any satisfactory answer. She said she would wait outside at noon. In the meantime she had me arrested. Of course I threatened to shoot myself if she wouldn't have me. She says, "No, don't do that; I would rather have you leave town,"

she says like that. She says, "I will write to you." She says, "You are going to be a man, aren't you?" I said, "Yes, if I can't have you." She said she would meet me out there at twelve, and before that she phoned the police or the other girl up there, I don't know.

Q. That was last August?

A. Yes.

Q. You were arrested on that charge?

A. Yes.

Q. What did they do with you?

A. Well, they kept me here about a week and then let me go with the understanding that I go out of town. Judge Stevenson says go out in the harvest fields and take a good sweat and when you come back, look for some other job and you will be all right. Come back in the fall. So I went out next Monday and stayed a couple of days and couldn't get anything and came back and waited about a week and stayed another week and then went to Hood River, and picked apples and stayed up there about ten days and then came back and I couldn't get anything. I was hoping the girl would kind of come to me after awhile and I found after a few months that she wasn't, so I thought I would get rid of her so somebody else wouldn't have her.

Q. When did you make up your mind to do that?

A. Last week.

Q. After you made up your mind to do that, what did you do?

A. I went off and got the guns.

Q. Where did you get the guns?

A. At Vancouver.

Q. What kind of a gun was it?

A. You got it there. That's the one I shot her with (pointing to a gun on Captain Baty's desk just opposite Mr. Ryan), but I had another one, too.

(This gun, marked #5308 on gun itself and marked "Exhibit A — Ryan," was thereupon handed to the prisoner.)

Q. This gun marked "Exhibit A," here, is that the gun you shot her with?

A. Yes.

Q. Where did you get that gun?

A. Vancouver.

Q. For what purpose did you get it? What did you intend to do with it?

A. I intended to shoot her. I intended to hold on to it, but in my excitement I dropped it in the weeds there, I guess.

Q. Where did you get the gun at Vancouver? Do you know the name of the store?

A. No, it was a hardware store.

Q. How long before you did the shooting did you get this gun?

A. About three hours, something like that.

Q. Do I understand that you went to Vancouver and got this gun and then came over to Portland, and did the shooting?

A. Yes.

Q. Where did you get this other gun? (Gun numbered 2506 was thereupon marked "Exhibit B" by Mr. Ryan, and handed to Mr. Tronson.)

A. This second-hand gun?

Q. At a second-hand store?

A. Yes.

Q. Did you buy that at the same time you bought the other gun?

A. Yes.

Q. Where did you buy this gun?

A. Well, I didn't want to buy them both at the same place. I thought that they might get suspicious. I didn't want to get two five-dollar guns. I bought that for three.

Q. What did you have in mind when you bought this?

A. Well, if one didn't work, the other would.

Q. Do I understand you to say that you bought this to kill her with ?

A. Yes.

Q. If the new gun didn't work, that would ?

A. Yes.

Q. When you came over from Vancouver, did you have the guns loaded ?

A. No.

Q. When did you first load the guns and prepare to do the shooting ?

A. Down there along the river some place.

Q. Out in South Portland ?

A. Yes.

Q. Did you load both of them ?

A. Yes.

Q. You knew where Miss Ulrich lived, did you ?

A. Yes.

Q. Had you ever visited at the house ?

A. No.

Q. Had you ever kept company with her ?

A. Yes, I walked around the streets with her once in awhile.

Q. You never went to her home ?

A. No.

Q. Did you know her folks ?

A. No.

Q. Where did you stay out there until she came along ?

A. I didn't get out there any too soon. I didn't stand round two minutes.

Q. What time did you leave town here to go out to the scene of the shooting ?

A. I came right from Vancouver and went through.

Q. What time did you get over to Portland from Vancouver ?

A. About five o'clock.

Q. After you got over to Portland what car did you take then ?

A. I walked out.

Q. Which way did you go out ?

A. First Street.

Q. How far out First Street did you go ?

A. Until I struck some of those other streets down there, Front Street I guess, Water or Corbett.

Q. How long did you wait out there before you saw Miss Ulrich ?

A. I didn't wait at all, I just walked around the block and she got off the car.

Q. Did you see her get off the car ?

A. Yes.

Q. What time was it when she got off the car?

A. A little before six.

Q. What car did she get off?

A. North and South Portland.

Q. Did you speak to her when she got off?

A. Yes, I said, "Wait a minute." I wanted to talk to her, and asked her for the last time; she started running, hollering.

Q. Just what did you say to her?

A. That's all I said to her. I wanted to talk to her and she started running and hollered.

Q. Did you have the gun in your hand at that time?

A. No, in my pocket.

Q. All loaded and ready for action?

A. Yes.

Q. How far was her house from the car?

A. Not quite half a block.

Q. Was there any one else got off the car at that place?

A. No.

Q. What did you do next?

A. I followed her around the house.

Q. Did she run around the house?

A. Yes.

Q. Did you run after her?

A. Yes.

Q. When did you commence shooting?

A. Just before she went in the door.

Q. What door did she go in?

A. The back door.

Q. How many shots did you fire?

A. One before she went in.

Q. How many after that?

A. Four; I think there are only five in the gun.

Q. Did you know that the last bullet struck her?

A. I knew one must because she fell down after I began firing the other bullets. She was in the bathroom; then she began to crunch down; then she fell on her face like a board and struck her head on the floor. I thought she must be dead or unconscious or something like that. I left then. I took it for granted she was dead.

Q. You didn't leave or didn't stop shooting until you thought she was dead?

A. No.

Q. You went out there for the purpose of killing her if she didn't accede to your wishes?

A. Yes, I am sorry I had to do it.

Q. Why did you feel that you had to do it?

A. I didn't want anybody else to have her if I couldn't. I thought I should have her. She told me once she liked me, and I didn't see any reason for turning me down. I acted like a gentleman. I had given her one present already.

Q. After you thought she was dead and that you had completed your job, where did you go?

A. I ran down on Hamilton Street.

Q. This gun that you used to do the shooting, was this gun (marked "Exhibit A") the new gun numbered 5308 (handing it to him for inspection)?

A. Yes.

Q. Where did you go?

A. I ran out of the way kind of on a trot down into Hawthorne Bridge and then North on Union Avenue and caught the Vancouver car and went to Vancouver.

Q. Did you take both of these guns with you?

A. No, just one. I dropped the other one.

Q. Which one did you drop?

A. The new gun.

Q. That is, you dropped that after all the bullets were fired out?

A. Yes.

Q. After you got to Vancouver where did you go?

A. I went to a picture show over there and stayed about half an hour, and then I went to a rooming house.

Q. Stayed all night in Vancouver?

A. Yes.

Q. Did you feel pretty nervous, knowing that you killed her?

A. Yes, I sat up. I didn't sit up; I laid awake. I didn't sleep at all.

Q. Where did you go when you left Vancouver?

A. Went right out the next morning, went right out the Pacific Highway.

Q. Why did you run away?

A. Well, I wanted to get the papers and see if I had killed her and then I was going back and shoot myself at the same place I shot her. I didn't want them to get me until after I went around another way and shot myself down there.

Q. Did you intend to come back?

A. Yes.

Q. Did you read the papers at Vancouver?

A. Yes.

Q. Did you see in the papers that Miss Ulrich was dead?

A. Yes.

Q. Why did you keep going the other way?

A. Well, I didn't want to come back this way and run into the police. I was going around Seattle and Tacoma and cross over and come back around.

Q. When you read in the papers that you had killed her, did you feel satisfied?

A. Well, yes, but I was afraid there would be bloodhounds after me, and I would get shot down in the road.

Q. You weren't worrying so much about her as you were afraid somebody might do you an injury?

A. Well, I didn't want them to get me until the job was completed and I had shot myself.

Q. Did you think there was somebody else interfering to keep her from marrying you?

A. I guess there was.

Q. Did you have in mind to shoot any one else?

A. No.

Q. You knew she was engaged to marry another fellow?

A. Yes.

Q. Was that what made you decide to kill her?

A. I thought she gave him up. Well in a way I did and in another way I thought it was a bluff.

Q. When did you make up your mind to get these guns — on the day of the killing?

A. Yes.

Q. You knew at the time what you were doing, — what you were getting the guns for?

A. Yes.

Q. You got the guns with the idea that if she refused to marry you why, then, you would kill her?

A. Yes.

Q. You knew what you were doing at that time?

A. Yes, — I don't think a man in his right mind would do it.

Q. You knew that it was wrong to kill her, didn't you?

A. Yes, but all I was thinking was about her.

Q. You knew it would be wrong to kill her?

A. That's what the law says.

Q. You realized that fact at the time?

A. Not as much as I do now.

Q. You were in possession of your senses and you knew it was wrong to kill her?

A. Oh, yes, it was wrong to kill her — take her life.

Q. You know it is wrong to take that which you cannot give, and you knew at the time that you were doing wrong, and you knew that when you went over there to get guns?

A. I didn't take it very serious then like now.

Q. Did you ever drink liquor to the extent of getting drunk?

A. No.

When this confession was read to the jury, Tronson leaned over and asked the clergyman, "Well, what do you think of it?" When the verdict of the jury was given, he did not understand what it meant and asked to be told. When he was answered, he showed no appreciation of its significance, but remarked that there wasn't so much of a crowd out as at the trial.

This is the third case in which the Binet tests have been admitted in evidence and the findings in accordance with these tests practically accepted. No one seems to have denied that Tronson is an imbecile. He is of lower grade than the other two that we have discussed, and enough lower so that his defectiveness was much more apparent and easily admitted by all of the judges. As will be noted, there was no reasonable motive for the crime. In his own words: "She wouldn't marry me. That's why I killed her — so that no one else could have her." In the case of Gianini we are possibly dealing with the sex impulse, perhaps hardly recognized even by the criminal himself. In Tronson's case we have that impulse definitely recognized and asserting itself and, being uncontrolled, leading to an

action of the crudest and most savage kind. Under other conditions, it would very likely have shown itself in a different way. If Tronson could have gotten the girl off by herself, it is very probable that he would have committed violence in the gratification of his sex impulse. But since she refused to marry him and kept out of his reach, he shot her down in order that "no one else could have her."

It is unnecessary to discuss the case further. We need nothing more to convince us that the diagnosis of imbecility was correct. It remains only to point out two facts. First, that this man has been an imbecile at least since he was twelve years of age, that he could have been recognized as an imbecile and cared for, and thus this atrocious murder prevented. Second, that there are hundreds of just such persons, now in their youth, who are potential criminals. Unless their mental condition is recognized and they are cared for in such a way as to make crime impossible, many of them will repeat the career of Tronson.

Fred Tronson is in prison for life. He will in all probability never be pardoned. He will never have an opportunity to commit another murder. But that does not restore the life of Emma Ulrich and it is small comfort to her friends and relatives. It does not in

the least remove the blot upon society, which has allowed such a murder to be committed. Society should have taken him in hand twelve years ago. It should be further noted that Tronson had been before the Court at least once before he committed this crime. At that time had the Judge realized that he was dealing with an imbecile he might have sent the boy to an institution for the feeble-minded instead of simply ordering him to leave the town. Shall we learn the lesson and take care of the other Fred Tronsons who are now in our public schools and on our streets?

CHAPTER IV

THE CRIMINAL IMBECILE

From the description already given it will be seen that Roland Pennington is very different from Jean Gianini. Both are imbeciles, but each is an example of a special type. Gianini is of a nervous, impulsive, irritable, loquacious type, fond of show and excitement, a braggart and a coward, with an excellent memory, a great reader — particularly interested in stories of excitement and crime. Pennington, on the contrary, is a slow, dull, relatively stupid boy, of poor memory and slow perception. While having made the fifth grade in school work, he has done it slowly and with not so much success as in the case of Gianini. He is not so much given to talk or to showing off; is somewhat addicted to drink and is exceptionally fond of playing pool.

Gianini's confession is colored by his desire to show off and shine in the limelight; Pennington's, on the contrary, is a plain, unelaborated statement of the facts.

He is driven to his confession, not by his desire to show off, but in self-defense. His colleague, March, is trying to throw the entire responsibility upon him in order to escape from any condemnation. In the face of this Pennington is prompted to tell his own story. He is not intelligent enough to make up a plausible story which would incriminate March and save himself. But in telling the facts as they occurred he incriminates himself quite as much as March, so far as the actual occurrences are concerned. His whole conduct, from the beginning of the crime until his arrest, is that of a dull, stupid person. He does not even wield the black-jack with intelligence, and after the man is killed by his comrade, he takes no precaution to save himself from suspicion, to dispose of the body or to clean up about the barn and remove the evidences of a crime. And finally, when it comes to a statement of the case, he apparently makes no attempt to shield himself, but acknowledges his part in it, although that part was, as a matter of fact, so slight that a little variation in his testimony would have thrown the entire burden upon March and relieved him from any complicity in the matter.

If the foregoing statement of the case is correct, we ask at once, how it happened that the jury did not see

it in this light, but instead brought in a verdict of "Guilty in the first degree"? While there are many elements in the answer, such as the demand of the public for revenge on the murderer of the man who was more or less of a favorite; a hastily drawn jury; a hurried trial, etc., the burden of the explanation falls back upon the same condition which we discovered in the case of Gianini, namely, the ignorance of the general public in regard to this type of feeble-mindedness. Almost every one thinks that he knows an imbecile. We have so long considered these high-grade cases as *normal but vicious* persons, that it is difficult to change the point of view suddenly and realize that they are not responsible for their deeds.

This failure to recognize the high-grade type of imbecile extended even to the "experts" in the case; for whereas there were three who testified to the feeble-mindedness of the prisoner, there were four or five who testified to his normality. These were four general practitioners of medicine, including the jail physician, and the fifth, a professor of neurology and neuro-pathology. These gentlemen are all familiar with what we should call the low-grade type of imbecile. They were perfectly correct in declaring that Roland Pennington is not a low-grade imbecile. Not one of

them had had experience with the high-grade type. They were, therefore, not qualified to pass upon a case of this kind. It was as though four general practitioners had been brought in to decide a case of obscure insanity. Every one of them could have testified that he had had more or less to do with insane people, meaning persons who are maniacal or strongly melancholic or katatonic, but what would be the value of the testimony of such men in such a case, for instance, as that of Thaw?

These men all thought they knew something about high-grade feeble-mindedness. They all testified that Pennington was a normal man. Compare this with the statement of Dr. Martin W. Barr, one of the foremost authorities on feeble-mindedness in the United States — indeed, in the world. Dr. Barr says (*Alienist and Neurologist*, November, 1914, page 367): —

"The courts simply do not go far enough back; they fail in that they do not reach the inception — the root of the matter. They often punish without careful investigation of the causes from which criminal instinct springs — the environment, family history, inherited tendencies, physical disability, and that susceptibility to suggestion which makes them the ready tools of the vicious.

"In the case of Roland Pennington, tried in Media

last June, for aiding in the murder of a man, it was proven that the boy, although almost twenty in actual age, yet coming from a neurotic stock, with three first cousins imbecile, had mentally only attained some 11 or 12 years; still he was adjudged responsible, and murder in the first degree was the verdict.

"Is it not a poor law that first permits a person to commit a crime, and then punishes him for it, not recognizing that an ounce of prevention is worth a pound of cure?

"Pennington had sufficient intelligence to comprehend the enormity of the deed, but, susceptible to suggestion in exaggerated degree, he had not sufficient inhibition to resist the volitional act.

"Early recognition of his mental defect and separation would have protected him alike from tempter and temptation."

It is unfortunate that Dr. Barr did not testify in the case, but his assistant did testify and was understood to express Dr. Barr's views.

It was unfortunate, indeed, that men who really knew so little about the type of case before them were allowed to pass as experts and their opinion allowed to carry more weight with the jury than the opinion of those who have spent years in intimate association

and study of the problem of high-grade imbecility. It should be recognized that there are very few persons who are expert with this type. The superintendents of our institutions for the feeble-minded, after a few years of experience, have a knowledge of this matter which far surpasses that of any physician who has not had institution experience, however great a specialist he may be in nerve diseases, in insanity or epilepsy. It is not enough to find out that a physician has had some experience with imbeciles. The real problem is: Has he had experience with this high-grade type? Is he able to pick them out? Is his knowledge as well as his experience confined to the medium and low grades, which every one meets? Failure to make this distinction had much to do with the verdict in the case of Pennington.

Another element in the result was the failure to make clear to the jury the precise situation, the real point at issue. The defense in the case had no desire to free Roland Pennington from all the consequences of his deed. It was not a case of the electric chair or freedom. The imbecile, especially one who has shown the tendency toward crime or willingness to be led into crime, should never be at large where it is possible for him again to go wrong. On the other hand, it is ab-

horrent to think of a child (in mind) going to the electric chair for the deed which he committed while under the influence of a superior intelligence, or while impelled by the hidden forces of his nature over which he had no control on account of his weak mind. It should have been made very clear to the jury that what was wanted was to save the commonwealth the shame of officially putting to death a person who had only a child's intelligence. In an ideal state such a person should doubtless be kept in an institution for the feeble-minded under a life commitment, unless his impulses are such that he proves to be dangerous to the other inmates, in which case a different kind of institution should be provided. Until we arrive at a condition where we treat such persons ideally, one cannot object to the state prison for life for the imbecile manslayer. This, unfortunately, was not made very clear to the jury, and it seems probable that many of them thought that their verdict was either to condemn him to the electric chair or to set him free. Having only these alternatives, one can perhaps understand their decision.[1]

Another somewhat nice legal point was involved and

[1] See Gianini Case, Defendant's Request to Charge, Nos. XLII, XLIII, Appendix, p. 153.

brings up a matter which calls for some discussion. As already stated, March had been convicted largely upon the testimony of his accomplice, Roland Pennington. If now the jury should acquit Roland Pennington on the ground of imbecility, what would be the effect of such a decision upon Pennington's testimony against March. Every one felt that March was guilty and consciously guilty and should be punished to the extent of the law. To bring in a verdict in the case of Pennington which would result in annulling his testimony and thereby taking away the one sure means of convicting March, was a serious matter. One may well believe that the jury felt that it was safest to convict Pennington of murder in the first degree and thus avoid raising this confusing question.

As a matter of fact, although the question would undoubtedly have been raised and attempts made to free March on the basis of Pennington's feeble-minded testimony, yet such a procedure would not have been warranted.

Pennington, as we have claimed, is an imbecile with a mentality of about eleven years. We have a right to judge him largely on the basis of an eleven-year-old child. The testimony of eleven-year-old children is often admitted into court, and many a person has

been convicted on such testimony. It is true that it is a somewhat moot question as to how much credence should be placed in children's testimony. The real criterion in such cases is the nature of the child, a matter which we have already considered. A child may testify to simple facts, and may be relied upon where he has no particular interest, where there cannot be shown any tendency or desire on the part of the child to show off or to say something for effect or to exercise childish imagination and invent a large story for the sake of the pleasing sound.

It is perfectly clear to any one who studies the confession of Pennington that he must have told a straightforward story. As already stated, he would not have incriminated himself as he did if he had been falsifying. He is not the type of person that runs on in an imaginary tale without regard to the facts. In short, his testimony bears every evidence of being entirely credible.

On the other hand, as already pointed out, Gianini's testimony is unreliable, because he was talking for effect. He is of the type that loves show and notoriety. His testimony was only to be trusted where it could be corroborated by facts or the testimony of others.

Careful study of the testimony and the nature and the character of the child will almost always enable one

to decide very accurately as to how much credence is to be placed in the evidence. In other words, the fact of high-grade imbecility does not of itself make the child's testimony acceptable or non-acceptable. It must be judged on its merits. We have in these two cases excellent examples of the trustworthy and untrustworthy.

The testimony of Pennington at the March trial was a most marvelous performance. To those unfamiliar with high-grade imbecility, it was almost unexplainable. Many thought that he must have been very carefully and elaborately coached; that he had been told just what to say, and had learned his lesson well. Those, however, who know the imbecile understood perfectly what was happening. This eleven-year-old boy was telling a plain, unelaborated tale. He was not intelligent enough to try to escape himself, and so he had nothing to hide and, consequently, got into no confusion. He answered, "Yes," "No," or, "I don't know" with a wisdom and a consistency that was simply amazing, and, as said, could only be explained on the understanding that he was telling the truth. No amount of cross-examination confused him, no sudden coups of the lawyer for the defense could entrap him. For example, when asked with considerable heat on

the part of the attorney why he had forgotten a certain point while he remembered very vividly a certain other point, the witness made no attempt to explain; simply remarked that he did not know. In truth, he did not know. Any such psychological matter was as far beyond him as the heavens. Without imagination, without ability to reason out the effect of his answer on his own future, he could simply answer in the plainest kind of "Yes" or "No" as he knew the facts.

With these considerations, we pass on to consider the larger and more difficult problem, "Can an imbecile of the mentality of eleven years know the nature and quality of his acts and understand that it is wrong?"

CHAPTER V

RESPONSIBILITY

All students of the psychology of childhood agree that not until the dawn of adolescence does reasoning as such begin to show itself in the child mind; that judgment and foresight and self-control, such as enable a person to counteract his natural impulses and make himself fit into the conventions of society, are practically unknown previous to this age. It is true that many children are taught to say what the adult alone can feel in connection with such matters. But as for having the real feeling and the understanding of the situation, we seem to have no right to expect it before the beginning of this adolescent period, from twelve to fifteen years of age. Everything points to the correctness of the conclusion that during this early period of pre-adolescence the child is a creature of impulse and instinct and is controlled largely by counteracting one instinct by another. For example, the instinct to love and obey a parent impels the child to

do what that parent says, when he tells him not to yield to some impulse which would lead him into trouble according to the canons of modern society. Without going further into a discussion of the point, which would necessarily lead to many philosophical considerations, the writer may express his conviction, born of a study both of normal children and also of mental defectives of twelve years and under in mentality, that persons of this mentality do not know much about right and wrong. They act upon impulse and upon instinct, without very much thought. Even the child of the best opportunity and the most elaborate training in a good home may quite likely not know the wrongfulness of an act of homicide in the sense of having a real feeling of that wrong. He can doubtless, as already stated, *say* that the thing is wrong, because he has learned that this is the right thing to say.

Let us turn now to the other part of the legal phrase, "Does such a person know the nature and quality of his act?" If the writer understands these terms, the first may be translated into the expression, "Does he know what he is doing?" We take it that the expression originated in the attempt to cover those cases where persons, either momentarily or permanently deranged, literally do not know what they are doing. If this is

correct, then one cannot, as a rule, say that a high-grade imbecile does not know what he is doing. He is not like the lunatic who acts blindly and is probably no more responsible for his acts than a person walking in his sleep. The imbecile is not in this condition. He has, so to speak, full possession of all the mind that he has ever had and that, in the case of these high-grade imbeciles or morons, is certainly sufficient to enable him to know what he is doing. In the case of Jean Gianini, the writer testified that in his opinion he knew what he was doing. He knew the nature of his act. One cannot speak, it is true, with certainty in such cases. It is entirely possible that, as already intimated, the situation at first may have been a simple altercation or discussion which finally got to a point where the anger of the boy was aroused to such an extent that he acted without really knowing what he was doing. However, there is no more argument for that theory than against it, and without definite evidence on the question it is probably going too far afield to make any such claims of immunity on that ground. We are frank to admit that the probabilities are high that the boy knew the nature of his act. Did he know the quality of his act?

By the quality of a thing is meant that which dis-

tinguishes it from all other things. This implies a complete and extensive knowledge of the thing in question. To know the quality of an act — murder, for example — means to know all of the elements, forms, or modes of being or action which seem to make it distinct from all other acts. To know the quality of an act of murder is to know that it is unjustifiable; it is to know that it differs from the killing of a rat in that different consequences follow; that human suffering is involved, both that of the victim and of the victim's friends and associates. It is to know, at least in some vague way, that human society could not exist if murder were the rule. To know the quality of an act of murder is to know enough to be able to distinguish it from justifiable homicide, from killing in war, not to mention more obvious necessary distinctions.

Did Jean Gianini know the quality of his act? On the stand, under cross-examination, the writer was led to express the opinion that he did. Later study of the problem and consideration of the circumstances leads to the conclusion that this was erroneous. Such knowledge implies mental capacity which is not possessed by a boy under twelve years of age. It involves experience; it involves abstraction, which is notoriously lacking in such persons. If there is one characteristic

more noticeable than another among the high-grade imbeciles or morons, it is their failure to deal with abstract ideas; to draw generalizations from specific instances.

Did Pennington know the quality of his act? There is not the slightest evidence that he did. Indeed, in his case we may go farther and hold very probably that he did not even know the nature of his act. It is easily conceivable that he struck the man with the black-jack without knowing that he was committing murder, without knowing that he might kill him. His stupidity was clearly of such a character that it is a perfectly tenable position that he thought he was to strike the man and stun him until they could rob him and escape.

Did Tronson know the nature and quality of his act? Using revolvers as he did, it seems undeniable that he knew the nature. He was familiar with revolvers; he knew what they would do. He, undoubtedly, knew that he was killing Emma Ulrich. That he did not know the quality of his act is equally certain. She would not marry him, he did not want her to marry any one else, and he had no conception that he had no right to put her out of the way so that she could not marry another if she would not marry him.

Again, we might go further and deeper into the

philosophy of the question, the logic and ethics of it. But these few considerations seem sufficient to make it of the highest probability that persons of a mental age under twelve years, like the normal boys or girls of the same age, do not know and cannot be expected to know the quality of their acts. And this is sufficient, because the law requires no more than a reasonable doubt, and there certainly is a very reasonable doubt as to whether such persons know the quality of an act of murder and know that it is wrong.

CHAPTER VI

THE PUNISHMENT FOR CRIMINAL IMBECILES

In the foregoing chapters we have discussed the problem involved in these murders from the standpoint of the law in order to show that even under the law, as it now exists, such persons are not guilty of murder in the first degree. In the present chapter, we propose to discuss the matter from another standpoint and from a different angle. It is not now a question of responsibility or of some kind of justice to be satisfied. Let us face the practical question of what is to be done in these cases.

After all, what we want is protection for society. We cannot have innocent people killed in accordance with the whim of the irresponsible. These imbeciles have killed innocent members of society. What shall the living do to prevent these particular persons from repeating the crime and to prevent other imbeciles from ever committing such a crime? This, of course, involves the whole problem of punishment or the treat-

ment of the wrongdoer. Upon one thing everybody is agreed — we must make it impossible for these persons ever to do such a deed again. The surest way to accomplish this is to destroy them. Dead men commit no crimes. Society feels safe when a desperado is killed. If we can agree upon this solution, the problem is easily solved and further discussion is unnecessary. But society is not at one on this question. We are already seriously debating the question whether any wrongdoer should ever be officially executed. Indeed, many States have already decided that they should not be, and imprisonment for life has replaced capital punishment.

It is somewhat difficult to draw a line of distinction between the persons involved in these crimes and the so-called responsible murderers. It certainly is no great loss to society if Tronson is put out of the way. The same is true in varying degrees of Gianini and Pennington. It may be very successfully argued that the matter of responsibility is a fiction and that all persons should be treated alike, either all executed or none executed. Nevertheless, at the present time, we do draw the distinction, and many feel that the person who has full power over his action, who knows the nature and quality and wrongfulness of his act, should

be executed, while those who do not know should not be executed.

If we take the latter view, the question still remains, What shall be done with these criminal imbeciles? The alternative to capital punishment is incarceration for life. Here at least we find a distinction between these persons and the normal intelligent wrongdoers. Of all persons in the world, the criminal imbecile should be placed in custody under conditions that will forever make it impossible for him to repeat his offense. The man who commits murder in a fit of insanity may recover from his insanity and be a useful citizen for the rest of his life. The man who commits murder under a strong impulse of anger or in calm meditation as the result of perverted reasoning may recover normal reasoning and be a useful citizen. This is not true of the imbecile. He will never recover; he will never have more mind than he has now; he will never be free from the danger of following the suggestion of some wicked person or of yielding to his own inborn and uncontrolled impulses. It will never be safe for him to be at large. This is so obvious that it is highly probable that the imbecile once committed to life custody would never be released, and even that there would never be any attempt at such release. When these facts are under-

stood, the public will undoubtedly be satisfied to have such persons imprisoned for life or committed to an institution for mental defectives, where they will be constantly guarded and prevented from doing injury.

This was well brought out in the case of at least two of the persons described in this book. In the case of Jean Gianini, the lawyer made emphatically plain that there was no desire on the part of the defense to procure the complete liberty of the defendant. John F. McIntyre, the counsel, stated clearly to the jury that he had no desire except to save the boy from the electric chair, a punishment which he considered unjust. He even went so far as to state that if at any time in the future efforts should be made to secure the release of this defendant from any institution to which he might be committed, he himself would make as strenuous an effort to have the boy kept in custody as he was now making to save him from the electric chair. Apparently this made a deep impression upon the jury and went a long way toward helping them to return the verdict that they did. On the other hand, in the case of Roland Pennington this point was not made so clear, and the jury and the prosecution did not realize that the defense only wished to save the boy from execution and would be quite content with a verdict

that would result in his being incarcerated for life. An institution for feeble-minded would seem at first glance to be the logical place to which such a person should be committed. But no one need seriously object to commitment to a penitentiary or a state prison. Perhaps, in view of the fact that an imbecile has committed crime, that he has, as one may say, begun a habit in that direction, the state prison is the proper place for him, because here he can be absolutely controlled and saved from any future acts of this kind. This is precisely what happened in Tronson's case.

We are learning in these days that the old adage, "An ounce of prevention is worth a pound of cure," is something more than a witticism. These are days of prevention — in medicine and in morals. The most important part of our problem is yet to be discussed. It is true we must come to some decision as to what is to be done with these persons who now infest society and who, because of their imbecility which is unrecognized, may become criminals. But vastly more important, because more far-reaching, is the problem of how to prevent imbeciles from becoming criminals. We may save the Gianinis and the Tronsons and the Penningtons from murdering any more people, but how much better if we save them from killing anybody.

No one of these persons had, probably, any more instinct to kill than have you or I. As children in years they were harmless and innocent. They could have been cared for and led into paths of harmlessness if not of usefulness. All of them could have been recognized as mental defectives long before they arrived at the age when they committed crime. As dull and backward children at school, they were at once suspicious characters. Attention was called to them. Careful examination, such as is now possible, would have revealed the fact that they were mental defectives and as mental defectives were potential criminals. Then was the time that they should have been carefully guarded and watched and saved from an environment that would lead them to prey upon their fellows. If we wish to save our teachers from the possibility of being murdered by their pupils or our daughters from being killed by their wooers or business men from being struck down by the blows of feeble-minded boys, we must be on the watch for symptoms of feeble-mindedness in our school children. When such symptoms are discovered, we must watch and guard such persons as carefully as we do cases of leprosy or any other malignant disease. For fear that some one should feel that these are rare and exceptional cases, let us remind

the reader that the best estimate and the result of the most careful studies indicate that somewhere in the neighborhood of 50 per cent of all criminals are feeble-minded. Whether this holds for murderers is indeed not known. But many persons acquainted with feeble-mindedness recognize from the newspaper descriptions of murders that many of the murderers are feeble-minded.

These facts certainly warrant us in taking seriously the problem of the feeble-minded and the criminal imbecile.

One thing more. Careful studies have shown beyond the peradventure of doubt that at least two thirds of these mental defectives have inherited their defect; in other words, that they belong to strains of the human family whose intelligence lies below that which is required for the performance of their duties as citizens. This points to a further precaution necessary in looking toward the ultimate prevention of feeble-mindedness and the solution of a large part of our prison problem, and that is the prevention of the further propagation of this race of defectives. If it is true — and there is every evidence that it is — that children are daily being born of such a mentality that it requires the attention and thought of an army of nor-

mal people to prevent their growing up into criminal lives and that all of the best efforts can never make them able to take their place in society as useful citizens, then it certainly is our duty to see that such children are not born. How this is to be accomplished has not yet been worked out in detail. The colonization and segregation of all such people in institutions where they will not be allowed to propagate is one solution that is proposed. The other is by surgical interference, to render such people physically incapable of propagating. Probably both these methods and still others must be utilized to help solve this problem.

The intelligence of men is often measured by the amount of foresight that they have. The little child has little or none, as is also true of men of low intelligence. There are men who can look forward and plan their affairs for a few months in the future, others who can look forward a few years, still others a lifetime, and a few who can look forward into the coming generations. We shall demonstrate a high degree of intelligence if we look not only to the amelioration of present conditions in our prisons — which *must* be done; not only to the removal to more suitable environment of those persons who are unjustly confined because of their irresponsibility — which ought to be done; if

we not only see to it that from now on persons who come before the court, either juvenile or adult, are first studied to discover whether they are mentally responsible or not, which is of utmost importance; but if we go still farther and put forth efforts to determine how many and which of the children who are in the public schools to-day are mentally defective and therefore need care; and going still farther, if we have studies made and laws passed that shall, as soon as possible, lead to the reduction in the birthrate of these mentally defective individuals. A certain amount of feeble-mindedness we must expect to have with us for long years to come, because there will be sporadic cases and cases due to accident. But feeble-mindedness as related to crime may be exterminated in a few generations if we will but use our intelligence to attack this problem at its root.

APPENDIX A

GIANINI CASE

HYPOTHETICAL QUESTION PROPOUNDED BY THE DEFENSE

Assuming the following circumstances to have been established by the evidence in this case: —

That the defendant was on the 5th of December, 1897, born in the City of New York; that his father was Charles A. Gianini, who also was born in said city, and the paternal grandfather of the defendant was born in the said city and the paternal great-grandfather of the defendant was born on the south slope of the Alps in the republic of Switzerland.

The defendant's mother was born in the City of New York, her maiden name being Sara Cecelia McVey. That the defendant's mother was married to his father when she was about twenty years of age; that prior or previous to the said marriage she was bright, vivacious, stylish, and accomplished in music; that shortly after her marriage she began to become untidy in her appearance, morose, depressed, and indifferent.

At the time of the birth of the first child (Charles), to-wit, on the 13th day of November, 1891, about eleven months after her marriage, she was suffering from melancholia as the evidence in this case discloses.

Assuming that the child, Charles, lived to be but seven years of age and during his lifetime did not learn to speak, but merely made guttural sounds; that he did not walk, but moved about when seated on the floor, pushing himself sidewise, and finally shortly before his death tottered about. His death occurred when he was about seven years old. That he ate gluttonously and his death was due to asphyxiation, choking due to taking in trachea foreign matter while vomiting contents of an overloaded stomach.

Assuming that after the birth of Charles his mother's melancholia continued, she became indifferent to her child, took no care of him, and said that while she wanted to die, she was going to live forever; that she also said she thought that her face was black and that she was a negress, that she would not go into the street because she was black.

Assuming, too, that she became addicted to the use of liquor, first lager beer and subsequently whisky and brandy; that she made pledges, administered by priests, only to be broken. That at times she would brighten

up, and during one of these periods, namely, July 12, 1894, a second child, called Catherine, was born, which child still lives.

Assuming that thereafter she began to drink again more than before; that for eight months preceding the birth of the defendant she was drunk a great many times, that she was found in a drunken stupor, that she was brought home in a drunken condition by detectives, on which occasion she had with her her second child Catherine. That about six months before the birth of this defendant his mother was drunk, that the seventh month before the birth of this defendant she was drinking, and on one occasion threw her husband's books out of the window on an adjoining roof, during a rain storm. And in the eighth month before the defendant's birth she drank and the same condition prevailed.

Assuming that from the June before the defendant was born, which was on December 5, 1897, she was attended by Dr. Charles N. Weeks of New York City, and he found her depressed, morose, and in a melancholic condition most of the time, at times hysterical; that she would refuse to talk to him, for one half a day at a time; that she would refuse to answer questions, that she would pay no attention to questions,

and that she was also inclined to stare right past him; that she would weep; that she paid no attention at all. At times the pupils of her eyes were dilated, at times contracted, their expression at times was wild and sometimes vacant. These conditions continued during the time Dr. Weeks was treating her. He prescribed bromide for her liquor and the same condition continued after the birth of the defendant.

The general appearance of the defendant's mother was untidy, and these conditions remained unchanged after defendant's birth. That when born the defendant was poorly nourished, under weight, weighed about five pounds, and was inclined to be emaciated; that at the time of the death of the first born (Charlie), to-wit, on the 21st day of March, 1899, she was again observed by Dr. Weeks, and then she was absolutely indifferent as to the conditions so far as the boy was concerned; showed no grief, and her general condition was such as he described at the time he was treating her.

And assuming that after the birth of the defendant he was a bottle-fed baby, not nursed by his mother, and when about a year old placed in the care of Mrs. Leigh, with whom he remained until he was about six years old. That the defendant's mother died on June 3, 1899, in a Sanitarium, known as St. Anne's Retreat in

the City of New York, the cause of death was meningitis, alcoholic heart failure.

Assume that up to the time the defendant was five years of age he didn't speak, and made sounds which resembled yells. Assume that about 1906 or 1907 the defendant's father took him from Mrs. Leigh's, he was then able to talk and walk, and for several weeks he was taken care of by Mrs. Hoberg and from there was taken to Lady Cliff Academy on the Hudson, where he remained for one term. While there he usually appeared dirty, but seemed to be making some progress.

In 1907, assume when the defendant was ten years of age he went to live in the Bronx, where he lived for two years and attended school during this period. At one time he took two little girls to a piece of woods and started to take their clothes off, and when asked why he did it, said he was going to play Indian and that Indians were naked.

On one Sunday afternoon he was observed in a group of children eating mud pies, and the children were calling him "Loonie" and were telling him to eat another one.

During these two years that the defendant lived in the Bronx he was observed to tease children. He would take a little boy's wagon and run away with it.

He would take his hat and throw it over a neighboring fence. He would take the caps of girls and toss them over fences, pull their curls, take away their hoops when they were rolling hoops, and take the ball away when they were playing ball. He would do these things quite often. On one afternoon he was brought home with a gash on his right temple. It was bleeding and at least one inch in length. He stated that he had received it from a fall from a stone wall while he was playing "thief." On another occasion he chased a young girl who was stopping at the house around the room with a table knife because she was trying to correct him because he ran home from school without her. He did not attempt anything against that girl again, although she remained in the room the balance of the day.

In 1910 defendant's father moved from the Bronx, to Poland, and brought the defendant with him, and the defendant attended the Poland School which he entered in April of 1910, and there remained until February or March, 1913. After leaving school defendant worked in a knitting mill in Newport from about the first half of April until the second half of May, 1913, when he ran away and went to Ilion. At Ilion he was found working by his father and Mr. Frank

Newman wiping dishes in the hotel. He was then taken home. In the middle of August, 1913, the defendant again ran away, this time to Albany, and stated that while he was there he had been shot at two or three times by a policeman and was arrested. From Albany the defendant again went to Ilion, where his father and Frank Newman again found him at the same hotel, and when he saw them, he said that they were "swindlers."

At another time the defendant ran away to Herkimer, in the summer of 1912, and he stated that he had gone to the moving pictures. He said that he went to the store, the Poland Union, and bought a can of beans and a bunch of bananas for his trip to Herkimer. He left in the afternoon and did not return until the following afternoon, when he said that he ate the bananas going along the track before he ate the beans because he was afraid the bananas would melt. He said he ate the beans at night, opening the can with a nail, and ate them with a nail.

On another occasion in Poland he chased his sister with a table knife although she had not done anything to him. In the summer of 1910 the defendant was at Morehouseville, and one day while there he was fishing at the stream that passes in front of the Mountain

Home, when the flies and the punkies were biting very fiercely. He stood down there in his bare legs and bare head fishing and the flies biting him until the blood ran down his face and neck and legs. He was fishing there for fully an hour, and when asked if the flies had bothered him, he said "No."

In 1911, when the defendant's father's stepmother was in Poland, the defendant was overheard to say to her, "Why didn't you marry my father, I would like you better than this stepmother."

When the defendant was fifteen years of age, in the month of September, 1913, the defendant's father had him committed to the St. Vincent's Industrial School for juvenile delinquency, presided over by Christian Brothers, where he remained for about six months, coming home in February.

A few weeks before the commission of the alleged crime, he was observed to be quarreling on Main Street in Poland with two very small children.

At the age of sixteen years, in the early part of March, 1914, the defendant was noticed playing with a toy railroad car and building some tracks with some little irregular pieces of wood. He was also observed to play tag with children apparently from two to four years younger than himself.

In the early part of 1912, the defendant's father observed that he was practicing masturbation.

The defendant's father thereupon slept in the same room with him in order to watch him. The defendant continued this practice until the time he left home in the spring or summer of 1913 and admitted that he did it frequently.

Assuming that on the 25th day of March, 1914, Mrs. Ethel Beecher and the deceased Lida Beecher met the defendant at the Post Office in Poland, and the defendant asked the deceased when she was coming to see his father, and that she replied that she did not know, and the defendant said, speaking impatiently, "Aw, I don't believe that you intend to come at all; you will wait until the summer time and go home and then it will be too late." That they spoke about school, and the deceased said to the defendant that it would be better for him to wait until the beginning of another term because he would be behind the other pupils in his work; that on another occasion, on about the middle of February, 1914, the defendant came on an errand to get yeast to the place where the deceased and Mrs. Beecher were boarding and the defendant then said to them that he wanted to get away from Poland, and would rather be in New York in the Great White

Way; that he thought he would like to act in moving pictures as he did not like his home and he hated his father, and would not care to be a "sod-buster"; that the deceased asked him whether he would like to return to school, and he said that he would, but that his father would not let him; that he never stole but once in his life and that was twenty-five cents from a lady in New York, and she had given him twenty-five cents to buy some candy and he bought the candy and ate it himself. On the same visit the defendant asked Mrs. Ethel Beecher if there was a state prison in Rochester, and she told him no; he wanted to know if there was not some sort of a reform school there. She said that there used to be, but that the reform school had removed to Industry, and he asked what the reform school was like at Industry and she told him that the boys lived in cottages under the care of a matron, a man and wife generally, and that was as much as she knew about it. The defendant said he would like to be there and asked her about the state prison at Auburn and different prisons, what the sentence was and whether they had an electric chair or whether they hung. The defendant told them that they worked awfully hard at Sing Sing. The defendant also stated on that occasion that his father used to thrash him

for stealing apples that other men put him up to stealing.

Assuming at the time Mrs. Ethel Beecher and the deceased and the defendant were talking together, that the deceased told the defendant that she thought he would like to go in the country to work on a farm and asked him why he did not continue his school work another year; and that her tone was kindly and her whole deportment towards him on that occasion was such as to incline one to believe that she desired to help him and to well advise him; and that the defendant's conversation concerning prisons and industrial schools was such that it caused them to laugh, at the time; and that on other occasions when the defendant was with the deceased her conduct towards him was always kindly and that she was kindly and generously disposed towards the defendant and showed considerable interest in him.

Assuming that on the 27th day of March, 1914, at about quarter after seven the defendant was observed on the street in Poland with some children, with whom he had been seen at different times playing hide and seek and tag and I spy, and that he caught hold of the toque of one of the little girls and pulled it down over her face and that he poked an-

other one of the little girls in the back and that he called a girl by the name of Grace Palmer, "Palmer House," and said, "Leonard is the proprietor, isn't he ?" and kept calling her Palmer House, and that he was snowballing the girls, and that while he was engaged the deceased passed him on the street and said, "Hello, Jean," and that he then joined her and shortly afterwards was seen to come back with the deceased, going up the road towards Buck Hill. That later in the same evening, at about ten minutes to eight, he returned home, showing no trace of excitement or nervousness, and that he received some books of wall paper to be delivered to a neighbor and that he took these books and threw them so that they fell with a noise on a neighbor's veranda and was seen running near the railroad station and later returned home in the vicinity of eight o'clock, showing no trace of any agitation, excitement, or nervousness. That he took off his shoes, put on a pair of slippers, went to bed, and slept quietly all night. That on the following morning he reported for work at Sam Hutchinson's as usual, worked for about twenty minutes doing his chores, ate his breakfast, and nothing unusual was observed about him.

Assuming further that he was seen going along the railroad track in the direction of Newport; that he met

two men, one by the name of Smith, and that he shouted, "Hello, Smithy"; that later he was spoken to by a man named Sweet at Newport on the railroad track about four miles from Poland, and that when Sweet caught up to him and asked him where he was going, he said to Herkimer to see a moving picture show; that he had stolen a dollar from his father; that he accompanied Sweet to Autenrith's store and while there the murder of the deceased was talked about in his presence and that he ate peanuts and smoked a cigarette and asked where they had found the body and stated that he had gone to school to her; and subsequently was taken back to Poland by one Frank Newman, and thereafter was turned over to the Sheriff of Herkimer County and one of his deputies.

Assuming that on the 26th day of March he asked an acquaintance by the name of Morris Howe, a boy of fifteen years, if the deceased came to get her mail nights, and said that he would get even with her; that on Tuesday, March 24th, he told a man by the name of Estes Compo, with whom he was working, that the deceased had tried to send him to school and that if he had a revolver he would kill her, and asked this same man if he had read of a murder down South, of a colored man killing a white girl and laying it on the

superintendent of a factory and that the man was sentenced to the chair and the colored man confessed the crime; that on the preceding night he had been in Compo's room, where he saw a revolver and a knife, and on the following day he said if he had a revolver, he would kill the deceased; that about a week before the 27th day of March, while defendant was working for Sam Hutchinson, he told a boy he would some day put an end to the deceased.

Assuming that between the hours of seven and eight o'clock on the night of March 27th, 1914, Miss Beecher was killed at a dark and lonely spot on the Buck Hill road and that she had come to her death by being struck on the head with a monkey wrench and had been cut repeatedly to the extent of about 24 times with a knife in various parts of the body and that she was dragged from the place where she was killed to a clump of willows near the road and that her umbrella and hat were found the following morning in the road and that by following the track where her body had been dragged over the snow the body of the deceased was found.

And assuming that on the morning of the 28th day when the defendant was brought to Poland he was taken to a house of a Justice of the Peace and was taken into a room by the Deputy Sheriff and told that

he was suspected and was accused of being a party to the crime. That after he was completely stripped of his clothing he stated to the Deputy Sheriff that he had gone to school to the deceased and had trouble with her at school and wanted revenge and that he had met her the day before near the Post Office and asked her to go up to his house and see his folks about having him go to school again, and that the deceased told him that she would go the next night. That the next night he did meet her near the hotel and she said that she was ready to go up. They walked up the street, and when they got near his father's house, the defendant told her that his father did not live there, that they had moved up the hill, that he then stated in detail how he committed the crime and disposed of the body and what he did with the wrench and the knife. That he said, "You would not think any one could do a job as quick as that." He said he supposed they would talk insanity, but he was not any more insane than the Deputy Sheriff was, and he did not want them to talk about it.

He also said, "Gillette got the chair, didn't he?" and upon the Deputy Sheriff replying, "Yes," the defendant said, "He had no reason to kill the girl, but I did; I wanted revenge."

That at the same time the defendant signed a sworn

statement before the Justice of the Peace, in which he stated that he went to school to Lida Beecher, and had trouble with her and wanted revenge; that he was not afraid, and when he got home, he was just as happy as he ever was, and did not think anything about it, as he thought he had revenge; that at the time he made these statements he was cool and quiet and spoke connectedly; that he was not nervous or excited.

Assuming that the defendant had not attended the Poland school since February or March, 1913, and that while there he had studied under the deceased for about one year, and that during this period the only punishment he had received from the deceased was a seat facing the wall with his back towards the other pupils, and was occasionally sent upstairs to the Professor of the school for punishment. And that the deceased had always manifested a friendly interest in him, was mild, kind, gentle, and good to him.

And further assume that when he left school, he was in the sixth grade.

Assume that he had frequently been detected in telling lies, that he had spoken of hatred of his father, that he manifested no affection towards him, referring to his father as "Old Man" and "Him." That on the morning of the 28th when he was being brought

back to Poland by Newman, Newman stated to him, "You have got something beside skipping out now staring you in the face," to which he replied, "They can't give me but ten years"; he used no words, when informed it might be a long time, that expressed fear or fright; and when he was informed that he had murder staring him in the face, he acted no different than ordinary.

That less than a year before the birth of Charles, the first child, the defendant's mother suffered from an attack of diphtheria, for which she was treated by Dr. Quinlan.

Further assume that in the summer of 1910, at Morehouseville, while quarreling with a little boy named Arthur Jones, the defendant said he would go up to his father's room and get his hunting knife and kill him.

That while the defendant was at St. Vincent's Industrial School for juvenile delinquency, at work in the laundry, he told Mr. Minor that if his father didn't get him out in February, he would burn his father's buildings when he got out.

Now, doctor, assuming all these facts to have been proven in this case, from your experience in the treatment of and knowledge of imbeciles and idiots,

from your skill and expert knowledge, can you express an opinion concerning the mental condition of Jean Gianini at the time of the killing of Lida Beecher, on the 27th day of March, 1914?

By Mr. Thomas: If the Court please, I object to the question as improper in form and that it concludes with assuming all these facts to have been proven in this case, and that it is not an inquiry which can be properly permitted to be put to the witness here. That, in addition, it does not correctly state the evidence, and that especially this part of the question is improper — "That she showed no grief, and her general condition was such as he described at the time he was treating her," referring to Dr. Weeks, and further it assumes incorrectly the time that the defendant encountered Miss Beecher, near the Post Office on the 27th day of March, 1914, which is stated here to be about a quarter after seven.

By Mr. Hirsch: What time do you say it was, Mr. Thomas?

By Mr. Thomas: The proof varies from seven to seven six. And it is incorrect in assuming facts not established upon the evidence, that he cut her repeatedly to the extent of about twenty-four times with a knife; and in those respects to which I have

called your Honor's attention, the question is improper, in that it assumes facts not proven, that it is improper in form, and the concluding paragraph, with reference to which I have called your Honor's attention, is improper and incompetent; and that the question is incompetent in that it does not call upon the witness to express an opinion as to the knowledge of the defendant of right and wrong, or his knowledge of the nature and quality of the act in killing the deceased.

By Mr. McIntyre: That is a question, if your Honor please, which was passed upon yesterday.

By the Court: I suppose it is preliminary to some extent, as far as this information is concerned.

By Mr. McIntyre: It is precisely the same as yesterday, but the question has had some additions.

By the Court: Was that indicated by the last part of it?

By Mr. McIntyre: Yes, sir.

By Mr. Thomas: He should be asked, "Can you now form an opinion assuming all these facts?" . . .

Q. Now, Doctor, assuming all these facts contained in the hypothetical question to have been established by evidence in this case, from your experience in the treatment and knowledge of imbeciles and idiots,

from your knowledge and skill as an expert, can you express an opinion as to the condition of Jean Gianini at the time of the killing of Lida Beecher on the 27th day of March, 1914?

Same objection

By the Court: Objection overruled. He may answer.

A. I can.

Q. What is your opinion?

Same objection.

By the Court: I think it should conform now to the language of the statute, shouldn't it?

By Mr. McIntyre: Well, I have, your Honor; I first asked him if he could express that opinion. Now if he doesn't express an opinion that comes within the provisions within the statute, why then of course his opinion is incompetent in this case. Now let's look at the code. Will you give me the section, please?

Section 1120.

"Offense committed by an idiot or lunatic. An act done by a person who is an idiot, imbecile, lunatic, or insane is not a crime. A person cannot be tried, sentenced to any punishment, or punished for a crime while he is in a state of idiocy, imbecility, lunacy or insanity, or is incapable of understanding the proceeding

or making his defense. A person is not excused from criminal liability as an idiot, imbecile, lunatic, or insane person except upon proof that at the time of the committing of the alleged criminal act he was laboring under such a defect of reason as not to know the nature and quality of the act he was doing or know the nature of the act as wrong."

By the Court: Well, now, my suggestion is why not embody that in your question.

By Mr. McIntyre: That is the second question, your Honor. . . .

Q. I asked you what was your opinion concerning his mental condition.

A. That he is an imbecile.

Q. Now, Doctor, assuming that all the acts recited in the hypothetical question to have been established by evidence, to be true, in conjunction with the physical and mental examination made by you in the County Jail on the 17th day of May this year, — from your experience and your knowledge of imbeciles and idiots, in your opinion was Jean Gianini at the time of the killing of Lida Beecher in such a mental condition as to know the nature and quality of the act he was doing or that the act was wrong?

By Mr. Thomas: I object to it as improper in form and copulative.

Objection overruled.

Q. Your opinion, Doctor?

A. He was not in such condition.

APPENDIX B

GIANINI CASE

HYPOTHETICAL QUESTION PROPOUNDED BY THE PROSECUTION

Q. Doctor, kindly assume that the defendant had been a pupil taught by Lida Beecher in the public school at Poland and harbored against her a desire for revenge because she had punished him; that he stated to people of his acquaintance that he would get even with her; that on Tuesday, March 24th, 1914, he stated to a man with whom he was working that if he had a revolver he would shoot her; that several days previously he had this wrench, Ex. 45, in his possession and stated to a man who asked him what he was going to do with it, that he had use for it; that he met Miss Beecher, who was a young lady about twenty years old, five feet three inches in height, weighing about 126 pounds, wearing upon the head this cap, Ex. 26, and as an outer garment, this raincoat, Ex. 29 (showing to witness), Wednesday, March 25th, 1914, about

seven P.M. in the Post Office at Poland, Post Office in the village of Poland, the location of which is indicated on this map, Ex. 1, to which I now call your attention (indicating); walked with her and Miss Clark, a teacher, from the Post Office along Cold Brook Street to a point on the southerly side of the street opposite the residence of James D. Countryman, the location of which is also shown on the map at a point to which I now call your attention (indicating), and that during that walk the defendant asked Miss Beecher when she was coming up to see his father, and upon receiving the answer that she did not know, said, "Aw, I don't believe you intend to come at all; you will wait until summer time and go home and then it will be too late"; that on the following evening, Thursday, he again met Miss Beecher at or near the Post Office and asked her to go up to his house and see his folks about going to school and she replied that she could not that night, that she was going to prayer meeting, that she would go the next night; that on the following day, Friday, he provided himself with the knife, Ex. 48, for the occasion, and with the intention of killing her, sharpened it for that purpose; that he met Miss Beecher about seven P.M. on the evening of Friday, March 27th, near the Post Office and walked with her along

the south side of Cold Brook Street to the foot of Buck Hill, which Buck Hill road is also shown on this map, a distance of 2006 feet; that they then proceeded together along up Buck Hill, he getting her to accompany him by telling her that his father lived up over the hill, had moved up there two or three weeks before; that they went on part way up the hill, and Miss Beecher hesitated and said it was farther up than she thought it was, she did not think she would go any farther, and the defendant said to her, "It is not but a little ways farther"; that when they got to a point on the hill distant about 4198 feet from the Post Office, she hesitated and said, "It is dark and I see no houses, no light, don't think I will go any farther, will write your father a letter in regard to this school matter"; that as she stopped he stepped back of her, hit her on the head with this monkey wrench, Ex. 45, which weighs 2 pounds $7\frac{15}{16}$ ounces, which I now show to you, he at that time having as an outer garment this coat, and wearing this shirt, Ex. 49, which I now show to you; knocking her down, he hit her twice with it after she was down; that when he first hit her with the wrench, she did not cry out but moaned; that he then threw the wrench up over the fence on to the top of the bank, about 35 feet; that it was so dark he

could not see; took the knife, Ex. 48, and as she was lying on the ground, hit her with it several times to be sure to finish her, inflicting punctured wounds, one on the back of the neck just below the hair line ¾ of an inch in length, one on the left side of the neck about ½ of an inch long, cutting a hole in the external carotid artery 3 inches above the bifurcation of the common carotid artery; that he then grabbed the body, which was face down, by the right foot and dragged it across the road under a barbed-wire fence, down the hill back of a bush to the swale; that he took hold of the right foot because he did not want to get blood on his hands so that his finger prints could be taken; that he ran immediately from the body to the Buck Hill road and came out on to it a few rods nearer Poland than the point where he dragged the body under the fence, ran down the road some distance, and a team or sleigh came along and he stopped running and waited until after that team got by him; that he reached his father's house, which is shown on this map, Ex. 1, and the location of which I call your attention to (indicating), at 7 : 30 and would have reached it sooner if he had not fallen down four or five times on the way home; that he went into the house and put the knife, off from which he had wiped the blood in the snow, in the pantry

drawer; that he was sent on an errand to the house of Thomas Owens, on Cold Brook Street, which is also shown on this map, Ex. 1, to the location of which I now call your attention (indicating), to return some books of samples of wall paper, and to give Mr. or Mrs. Owens a one-dollar bill and a soap order, to which it was pinned; that he ran down the street, threw the books on to the veranda floor near the kitchen door, ran down Cold Brook Street to South Main Street, and tried to get the freight train which passed south on the M. & M. railroad; that he ran back to his father's house and arrived there a little after eight, took off his shoes, put on his slippers, read the newspaper a little while, and went to bed; that he arose about six o'clock the next morning; left his father's house, went to Sam Hutchinson's, by whom he was employed, and whose residence is also shown on this Ex. 1, at the location to which I now call your attention (indicating), went to the barn, assisted in doing the chores, went in to breakfast, said nothing, left there the coat, Ex. 41, which was then substantially in the same condition as it is now, and to its condition, especially on the back, I call your attention, and this being the coat which he wore the evening before, which I now hand to you and call your attention to (indicating) the condition of, put on

another coat, and started down the railroad track towards Herkimer, which is on the line of the New York Central and Hudson River railroad, and some fourteen miles from Poland, intending then to go away from Poland; that he was apprehended at Newport, a place distant about four miles from Poland and between there and Herkimer, and brought back in a cutter by Mr. Newman, whom he had known for several years; that on the drive from Newport to Poland Newman asked him if he had heard what happened at Poland, and defendant replied he hadn't; when asked if he had seen anything of Miss Beecher the night before, said he had not; when asked by Newman if he had heard that Miss Beecher was murdered or killed, defendant said, "No," and on Newman's saying, "They are looking for you for it," defendant said, "They can't give me but ten years, can they?"; that as they drove into the village of Poland and turned from South Main Street into Cold Brook Street, near the Post Office, there were some rigs coming down the hill, and defendant said, "They are coming off the hill with her now"; that in the afternoon of the same day he voluntarily made, signed, and swore to the following statement with reference to the matter.[1]

[1] For statement see p. 9.

State, Doctor, basing your reply upon the hypothesis stated in the question, whether or not, in your opinion, the defendant, at the time he struck Miss Beecher with the wrench, understood that he had no right to do it?

Mr. McIntyre: Don't answer. We object to the question in that it only recites the revolting details of the alleged crime and that when the question was being propounded to the witness upon the stand, counsel for the State exhibited the knife, the wrench, the coat, the hat, and other things in evidence in rather a dramatic way before the jury.

We object to the question upon the ground that it does not contain all the essential features in this case bearing upon the crime.

We object to the question upon the ground that the hypothetical question fails to include the condition of the defendant's mother at the time of his birth; it fails to include the fact that the first child was an idiot during his lifetime; it fails to disclose the conduct and deportment of the defendant from the time of his birth down to the commission of this crime.

We submit respectfully that the hypothetical question is a garbled statement of that which has transpired during this case and can have but one effect — to bias and prejudice the minds of the jurors. And I

submit it is incompetent, immaterial and irrelevant and improper, in addition.

The Court: Objection overruled.

Mr. McIntyre: Exception, sir.

Q. Have you got the conclusion, the concluding portion of my question in mind?

A. Would you repeat it?

Q. Yes. State, Doctor, basing your reply upon the hypothesis stated in the question, whether or not, in your opinion, the defendant, at the time he struck Miss Beecher with the wrench, understood that he had no right to do it.

A. I cannot get any evidence from the facts recited there to enable me to determine.

Q. Well, can you determine from this question an opinion as an expert?

A. No, I cannot.

APPENDIX C

GIANINI CASE

DEFENDANT'S REQUEST TO CHARGE

I

DEFENDANT requests your Honor to charge the jury that, in determining the guilt or innocence of the defendant of the offense charged in the indictment, the jury are to consider only the evidence of the case and are to disregard any statement made during the course of the trial, by counsel or the Court, and are not to be influenced or governed by any expression of opinion or action of either the Court or counsel for defendant or the people.

II

Defendant requests your Honor to charge that the jury are not to be influenced, in the consideration of this case, by any comment or expression of opinion in the newspaper reports of this case, and they must disregard any statement or comment contained in any

such report, if same has in any way been brought to their attention.

III

Defendant requests your Honor to charge the jury that, in considering this case, after its submission to them, the jury must proceed upon the presumption that the accused, the defendant herein, is innocent of the crime charged in the indictment and that it is necessary for the commonwealth to overcome this presumption by evidence to convince them, beyond a reasonable doubt, that the defendant is guilty of the crime charged against him in the indictment.

IV

Defendant requests your Honor to charge the jury that, in consideration of this case, the jury are bound to act and proceed upon the presumption that the accused is an innocent boy, and this presumption must continue throughout the trial.

V

Defendant requests your Honor to charge the jury that, the defendant being charged with the crime of murder, the commonwealth is bound to prove every

and all the essential facts necessary to constitute this crime beyond a reasonable doubt before the jury can convict the defendant of the crime charged in the indictment.

VI

Defendant requests your Honor to charge the jury that, upon the whole case, if the commonwealth has failed to prove all of the facts beyond a reasonable doubt, the defendant is entitled to be acquitted.

VII

Defendant requests your Honor to charge the jury that the burden in this case rests with the commonwealth, from the beginning to the end of the trial, to establish, beyond a reasonable doubt, every fact essential to the conviction of the defendant, and if the commonwealth has failed to prove such charge beyond a reasonable doubt, the defendant is entitled to an acquittal.

VIII

Defendant requests your Honor to charge the jury that the unintentional killing of a human being by another without motive, intent, premeditation, is neither murder nor manslaughter.

IX

Defendant requests your Honor to charge the jury that the questions of deliberation and premeditation, intent and motive, are purely questions of fact, to be determined by the jury from the evidence alone.

X

Defendant requests your Honor to charge that if the jury cannot say, beyond a reasonable doubt, that the defendant was sane at the time of the commission of the act, and cannot say whether, at that time, he was sane or insane, the defendant must be acquitted.

XI

Defendant requests your Honor to charge the jury that if, at the time the defendant committed the act charged against him, upon seeing the deceased, he was thrown into a state of mind from which he was deprived of his understanding, so as to be unaware of the nature and quality of the act he committed, or so as to be unable to distinguish between right and wrong in reference to that particular act at the time of its commission, this defendant must be acquitted.

XII

Defendant requests your Honor to charge the jury that, although sanity is assured and presumed to be the normal and natural state of the human mind, when imbecility is once shown to exist in a person, it is presumed to exist and continue until the presumption is overcome by contrary or repelling evidence proving sanity.

XIII

Defendant requests your Honor to charge the jury that if defendant was deprived of his reason at the time the act charged against him was committed, and which resulted from a settled and well-established mental alienation, or from the pressure and overpowering weight of circumstances occurring before and at the time of the commission of said act, the said defendant is legally irresponsible for it and must be acquitted.

XIV

Defendant requests your Honor to charge the jury that if, at the time of the commission of the act, the defendant was under the influence of a diseased mind, and was really unconscious that he was committing a crime, this defendant must be acquitted.

XV

Defendant requests your Honor to charge the jury that the insanity of the defendant need not be proven beyond a reasonable doubt.

XVI

Defendant requests your Honor to charge that the jury, in considering this case, are bound to act upon the presumption that the accused, the defendant, is innocent, and should endeavor, if possible, to reconcile all the circumstances of the case with that of innocence.

XVII

Defendant requests your Honor to charge the jury that the burden of proof rests with the commonwealth in this case, from the beginning to the end of the trial, and the commonwealth are bound to prove that the defendant committed the crime charged in the indictment beyond a reasonable doubt, otherwise the defendant is entitled to be acquitted.

XVIII

Defendant requests your Honor to charge that the jury must be satisfied beyond a reasonable doubt, from the evidence of the case, of the sanity of the defendant

at the time of the commission of the act charged in the indictment, and if the people fail to establish the sanity of the defendant at the time of the commission of the act charged in the indictment, this defendant cannot be convicted of any crime and is entitled to an acquittal.

XIX

Defendant requests your Honor to charge the jury that the law does not require that the insanity, imbecility, or mental aberration which absolves from crime should exist for any definite period, and only that it existed at the moment when the act occurred.

XX

Defendant requests your Honor to charge the jury that if the insanity, imbecility, or mental aberration which absolves from crime operated at the moment that the act was committed, that is sufficient in law to absolve from guilt, and this defendant cannot be convicted of the offense charged in the indictment, or any other offense.

XXI

Defendant requests your Honor to charge the jury that the commonwealth must satisfy the jury beyond

all reasonable doubt, that, at the moment the act alleged in the indictment was committed by the defendant, he had reason, perception, and understanding sufficient to enable him to discern right from wrong, and that if he had not, it is the duty of the jury to acquit this defendant.

XXII

Defendant requests your Honor to charge that if the jury believe that the defendant did not suffer from any mental aberration which would absolve him from punishment for the act charged in the indictment prior to the commission of the act, or subsequent thereto, but that such state of mental aberration did exist at the moment when the act occurred which the defendant stands charged with, this defendant cannot be convicted of the crime charged in the indictment, or any other crime, and must be acquitted.

XXIII

Defendant requests your Honor to charge the jury that if there is a reasonable doubt in the minds of the jury as to whether the act charged in the indictment was committed by the defendant while he was unable to discern between right and wrong, or if the evidence is

equally balanced as to this, so that the jury cannot safely and conscientiously determine whether the killing of the deceased was intentional, or was committed by the defendant while he was unable to discern between right and wrong with respect to the act, then this defendant is entitled to the benefit of that doubt and entitled to an acquittal.

XXIV

Defendant requests your Honor to charge the jury that if it finds that the defendant is of a mental age of under twelve years, he is presumed to be incapable of the commission of crime. (*Refused*)

XXV

Defendant requests your Honor to charge the jury that if it finds that the defendant is of a mental age of under twelve years, he is presumed to be incapable of crime and that presumption is not removed by proof that he had sufficient capacity to understand the act charged against him and know its wrongfulness, except by evidence that satisfied the jury beyond a reasonable doubt. (*Refused*)

XXVI

Defendant requests your Honor to charge that if the jury finds that the defendant is of a mental age of under twelve years, the evidence that he understood the nature or quality of the act charged against him and knew its wrongfulness must be strong and clear beyond a reasonable doubt.

XXVII

Defendant requests your Honor to charge the jury that it must find that the understanding of and the capacity for committing a crime is measured not by the chronological years of the defendant, but by the strength of the defendant's understanding and judgment.

(*Refused*)

XXVIII

Defendant requests your Honor to charge that if the jury find that the defendant was of a mental age of under twelve years, he was incapable of committing the crime charged in the indictment, unless the commonwealth has made strong, clear, and convincing proof beyond a reasonable doubt that the defendant was capable of discerning the difference between right and wrong or knew the quality and nature of his act.

(*Refused*)

XXIX

Defendant requests your Honor to charge that the burden is upon the commonwealth to show that the defendant has intelligence and maturity of judgment sufficient to render him capable of harboring a criminal intent.

XXX

Defendant requests your Honor to charge that if no motive has been established for the crime, the jury must regard it as important in its bearing upon the question of the defendant's mental condition at the time of the commission of the act charged against him.

XXXI

Defendant requests your Honor to charge the jury that if the commonwealth have established merely a slight, trifling, and inconsequential motive for the commission of the act charged in the indictment, they should regard it as important and give it more consideration in connection with the question of the defendant's mental condition.

XXXII

Defendant requests your Honor to charge the jury that the commission of the crime charged in the indict-

ment by a child of tender years from its very nature raises the question of abnormality of the defendant's mind and in the absence of clear, strong, and convincing evidence on the part of the commonwealth, it must conclude that the defendant's mental condition was such that he did not understand the wrongfulness of his act or understand the nature and quality of his act.

XXXIII

Defendant requests your Honor to charge that evidence of the want of a rational and reasonable motive on the part of the defendant for the perpetration of the act charged in the indictment is to be considered by the jury as strong corroboration of the fact of his mental irresponsibility.

XXXIV

Defendant requests your Honor to charge that the perpetration of the act charged in the indictment without any apparent motive or object, but against every motive which would appear to be naturally influential with the defendant, that they must at once inquire whether or not the defendant was of sound mind and take into consideration with the other evidence of this case that he was not of sound mind, the absence of

sufficient motive must lead them to conclude that he was of unsound mind and could not distinguish between right and wrong or know the nature and quality of his act.

XXXV

Defendant requests your Honor to charge that the absence of a clear and convincing motive in itself is evidence of an unsound mind.

XXXVI

Defendant requests your Honor to charge that if the defendant acted without any reasonable or rational motive or object, but against every motive and object, which it would appear should have been influential with him, that fact in itself raises a presumption that the defendant was of such unsound mind that he could not distinguish between right and wrong or know the nature or quality of his act.

XXXVII

Defendant requests your Honor to charge the jury that they have no right to presume a motive from the mere commission of the crime and have no right to speculate, guess, or surmise or supply any motive for the commission of the act charged in the indictment.

XXXVIII

Defendant requests your Honor to charge that the failure of the commonwealth to call as witnesses Drs. Maybon and Palmer, who made examinations of the defendant, to testify as to his mental condition, raises the inference that if they had been called as witnesses, they would have testified adversely to the commonwealth in respect to the defendant's mental condition.

XXXIX

Defendant requests your Honor to charge that from the failure of the commonwealth to call as witnesses Drs. Maybon and Palmer, who examined the defendant, the jury may infer that they would have testified that the defendant was a high-grade imbecile who was laboring under such defect of reason as not to know the nature and quality of the act of which he is charged in the indictment or not to know the act was wrong at the time it was committed.

XL

Defendant requests your Honor to charge that from the failure of the commonwealth to call as witnesses Drs. Maybon and Palmer, the jury may infer that had

they been called they would have testified unfavorably and adversely to the commonwealth, especially in the absence of any explanation made under oath as to why they were not called.

XLI

Defendant requests your Honor to charge that if the jury acquit the defendant on the ground of insanity, in that event the jury should specify in its verdict that it acquits him on the ground of insanity.

XLII

Defendant requests your Honor to charge that if the jury acquit the defendant upon the ground of insanity, it will become the duty of the Court to order him committed to a State Asylum.

XLIII

Defendant requests your Honor to charge that if the jury acquit the defendant on the ground of insanity, in this case such insanity will mean imbecility, and that as imbecility cannot be cured, it will become the duty of the Court to order him committed to a State Asylum for the rest of his actual life.

XLIV

Defendant requests your Honor to charge the jury that the denial of the several motions made by defendant's counsel throughout the trial, and the rulings of the Court upon objections, and refusals by the Court to charge as requested, are not to be taken as any expression of opinion on the part of the Court upon the facts of this case, but are only rulings upon the law, about which the jury has nothing to do.

NOTE. Requests XXIV, XXV, XXVII, and XXVIII, the Court refused to charge.

INDEX

Abstract ideas, lack of, in morons, 98.
Actions after crime, Gianini, 25, 27.
  Pennington, 50–52.
  Tronson, 76–78.
Alcoholism, 110.

Barr, Dr. Martin W., statement of, 86.
Beecher, Miss, annoyed by Gianini, 23.
Binet tests, and school experience, 35, 38, 54.
  use of, in Gianini case, 32–35.
  in Pennington case, 53.
  in Tronson case, 80.

Capital punishment, 101.
Cause of Gianini's condition, 39–41.
Causes of feeble-mindedness, 39.
"Charity" in Binet tests, 34.
Children, testimony of, 90.
  actions of, 94.
  suggestibility of, 63.
Code quoted, 128.
Colonization, 107.
Confession, Gianini, 4, 9, 10.
  Pennington, 44, 53.
  Tronson, 67–80.
  characteristic of imbeciles, 16, 29.
  childishness of Pennington's, 55, 56.
  not necessarily true, 17.
  why Gianini made a, 15.
Confessions compared, 83, 90–93.
Courtroom, conduct in, 30, 67, 92.
Coward, the imbecile, 23.
Cretinism, 40.
Crime, details of, Gianini, 122, 132.
  Pennington, 47.
  Tronson, 74.
Criminal imbeciles, what should be done with, 102.
Criminals, 50 per cent feeble-minded, 106.

Defense in case of, Gianini, 2, 5.
  Pennington, 43.
  Tronson, 66.
Delinquencies, previous, of Gianini, 7, 37, 115, 116.
  of Tronson, 68, 69, 82.
Display, love of, 29.

Experts, qualifications of, 85.

Feeble-mindedness, causes of, 39, 106.
  may be exterminated, 108.
Feeble-mindedness in family, Gianini, 40.
  Pennington, 87.
Finger prints, 26.

Gianini, Jean, case of, 1–41.
  actions after the deed, 25, 27.
  attitude of Miss Beecher toward, 7, 119.
  disregards counsel's warning, 30.
  evidences of pride in deed, 16–19, 29, 123.
  facts as established by testimony, 3.
  incidents in life of, 113–125.
  indifferent to crime, 10, 29, 120, 125.
  interest in stories of crime, 26, 118, 121, 123.
  mentality of, 13.
  mother of, 40, 109–112.
  previous delinquencies of, 7, 37, 115, 116.
  stories about, 31, 113.
  teased little children, 32, 116, 119.
  threats made by, 121, 125, 131.
Great White Way, 117.

Hypothetical question, defense, 109–126.
  prosecution, 131–136.

Idiot, defined, 12.
Imbecile, career of an, 54.
Imbecility defined, 11.
not curable, 102.
Imbecility, defense of, Gianini, 2, 5.
Pennington, 43.
Tronson, 66, 80.
Imprisonment for life, 89, 101, 104.
Indian, Gianini plays, 23.
Insanity in relation to crime, 102.
Instinct to kill, 105.
Institution for feeble-minded, the logical place, 104.
Intelligence, tests of, admitted into court, 2, 32–35, 53, 80.
Interest in crime, Gianini's, 26, 118, 121, 123.

Jail, attitude in, Gianini, 30; Pennington, 55.
examined in, Gianini, 29; Pennington, 53, 56.
Jealousy of March, 53.

Liberty of defendant not desired, 88, 103.

McIntyre, John F., 103.
March, convicted, 43.
convicted upon Pennington's testimony, 90.
Pennington's relation to, 55, 56, 64.
Masturbation, 117.
Melancholia, 110–112.
Mental defectiveness, inherited, 39, 106.
recognized early, 105.
Mentality of, Gianini, 13.
Pennington, 53.
Tronson, 66.
Money as motive, 57.
Moron, defined, 11.
abstract ideas lacking in, 98.
Mother of Gianini, 40, 109–113.
Motive, Gianini's, 4, 20–25.
March's, 53.
Pennington's, 53, 56–60.
Tronson's, 76, 80.

Pennington, Roland, case of, 42–64.
actions after the deed, 52–53.
conduct at trial, 92.
confession, 44–53.
disregards lawyer's caution, 55.
mentality of, 53.
relation to March, 55, 56, 64.
testimony against March, 43, 90, 92.
trial, 43.
Preparations for crime, Gianini, 6.
Pennington, 47.
Tronson, 70.
Prevention, 82, 87, 104–108.
Propagation, prevention of, 106–108.
Psychologists, testimony of, 32, 53, 66.
Punishment for criminal imbeciles, 88, 100–108.

Quality of an act, meaning of, 96.

St. Vincent's School, 7, 116.
School, failure in, sign of mental defect, 37.
Gianini case, 35–37, 124.
Pennington case, 54.
Tronson case, 66.
Segregation, 107.
Sexual theory of Gianini's crime, 20.
Society, duty of, 82.
protection for, 100.
Speech development retarded, 113.
State prison for the imbecile manslayer, 89, 104.
Sterilization, 107.
Stories about Gianini,
"Indian," 113.
"Soup and safety," 31.
"Strap oil," 32.
teased little children, 32, 113, 116, 119.
"Thief," 114.
Suggestion, discussed, 61–63.
Pennington, victim of, 56–64.
Superintendents as specialists, 88.

Testimony of, children, 90.
experts, 85.
Pennington against March, 43, 90, 92.
psychologists, 32, 53, 66.
witnesses, 3–8, 18, 31, 35–37.

Trial, Gianini, 1, 30, 31.
Pennington, 43, 92.
Tronson, 66, 67.
Tronson, Fred, case of, 65–82.
actions after the deed, 76–78.
confession of, 76–80.
mentality of, 66.
previous delinquencies of, 68, 69, 82.
Types considered, of imbecility, 83.
of feeble-mindedness, 12–14.

Verdict, Gianini case, 1, 2.
Pennington case, 43.
Tronson case, 66.

Witnesses, children as, 90.
Wrench asked about, 7.

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